

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 19-23649-rdd

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5 In the Matter of:

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7 PURDUE PHARMA L.P., ET AL.

8

9 Debtors.

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13 U.S. Bankruptcy Court

14 300 Quarropas Street

15 White Plains, New York 10601

16

17 September 17, 2019

18 10:03 AM

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22 B E F O R E :

23 HON ROBERT D. DRAIN

24 U.S. BANKRUPTCY JUDGE

25 ECRO: A. VARGAS

1 Notice of Hearing Notice of Commencement of Chapter 11 Cases
2 and Hearing on First Day Motions

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4 Notice of Agenda for First Day Hearing

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6 Motion for Joint Administration (document #2)

7

8 Chapter 11 Voluntary Petition

9

10 First Day Declaration

11

12 Debtors' Informational Brief

13

14 Case Management Motion

15

16 Cash Management Motion

17

18 Creditor List and Personal Information Motion

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20 Noticing Agent 156(c) Application

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22 Taxes and Fees Motion

23

24 Insurance Motion

25

1 Schedules Motion

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3 Surety Bonds Motion

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5 Unities Motion

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7 Customer Programs Motion

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9 Wages Motion

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11 Critical Vendor Motion

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 Okay. Good morning. In re: Purdue Pharma L.P.,
4 et al.

5 MR. HUEBNER: Good morning, Your Honor. I am
6 ready to proceed. I wonder if the Court would like to take
7 appearances first or if they have otherwise been taken and
8 we're just ready to go.

9 THE COURT: Well, normally I appreciate that, but
10 given the size of the group here, it probably would be
11 better for people just to state their appearance, who
12 they're appearing for, if and when they speak.

13 MR. HUEBNER: Okay.

14 THE COURT: Otherwise we'll just proceed.

15 MR. HUEBNER: Terrific. Your Honor, may I
16 proceed?

17 THE COURT: Sure.

18 MR. HUEBNER: Good morning, Your Honor. May it
19 please the Court for the record I am Marshall Huebner of
20 Davis Polk & Wardwell, LLP on behalf of Purdue Pharma L.P.
21 its 22 subsidiaries, and Purdue Pharma Inc., its general
22 partner. These collectively are the 24 debtors in these
23 Chapter 11 cases that I will be referring to as Purdue.

24 Please allow me to begin with a heartfelt thanks
25 to Your Honor. First day hearings in large cases invariably

1 involve dumping large amounts of paper on an already very
2 busy court and chambers on very short notice. We are
3 grateful that you agreed to hear us this morning.

4 I would also like to add a few other thank you's
5 at the present. To Vito Genna, the Clerk of the Court, and
6 Eddie Antino (ph), the Deputy Clerk, for taking the time to
7 speak with us last week and immediately reviewing the
8 pleading relevant to their office, and helped all of us
9 administratively in advance of this hearing.

10 And, of course, my thanks to Linda Rifkin, Paul
11 Schwartzberg and Brian Masumoto of the U.S. Trustee's
12 Office. We spoke to them many times over the last few days
13 regarding the first day filings and, of course, dumped
14 waivers of paper on them as well. More on the outcome of
15 those discussions when we get to the motions.

16 Finally, we would like to thank the U.S. Marshals,
17 court security officials, building personnel and others
18 involved in keeping all of us safe and the lights on.

19 We are appreciative of everyone's time and
20 attention and are honored to be here today in White Plains.

21 Your Honor, I would like to say a word about
22 notice, which I think is also an important place to start.
23 Our press release that was issued immediately upon the
24 filing of the first petition contained in it information and
25 a hyperlink to the Prime Clerk website. And as far as we

1 could load things onto the system officially with the Court,
2 Prime Clerk put them onto their system. It also contained
3 toll free numbers to provide additional information.

4 Notice of the commencement and of the first day
5 hearing was also served on the U.S. Trustee, the debtors'
6 top 50 unsecured creditors. We actually thought about 30,
7 40, 50 and just decided to go with the, what's pretty much
8 the largest number I think any case uses, although the
9 numbers are not very big by the time you get down into the
10 lower tens. The debtors' top three secured creditors, the
11 IRS, the Department of Justice, the U.S. Attorney's Office
12 for the Southern District, the Attorney General for all 50
13 states and the District of Columbia, the debtors' banks, and
14 all parties that have requested notice pursuant to Rule
15 2002, that, of course, being a very small number given that
16 the case was just getting going.

17 And, obviously, you know, once the 341 meeting is
18 scheduled we will (indiscernible) for 309(f) as appropriate.

19 THE COURT: Okay.

20 MR. HUEBNER: One last thing, Your Honor, I
21 thought I might do before beginning my overview is to
22 introduce a few people that you are likely to see during the
23 case. Davis Polk was retained by Purdue in March 2018 and
24 has been working in multiple areas of practice since then.

25 With me in court today are Ben Kaminetzky, Tim

1 Graulich, Jim McClammy, Eli Vonnegut, Marc Tobak and Chris
2 Robertson, some of whom you will be hearing from soon. Let
3 me be very clear. At future hearings we expect that you
4 will be seeing a tiny fraction, hopefully, or at least a
5 small fraction of the Davis Polk folks here today. But
6 first day hearings of necessity are very broad and very
7 deep, and obviously this one came upon us with some speed.

8 PJT Partners, the company's investment banker,
9 began with Purdue in November 2017. Here in court today are
10 Jamie O'Connell and Rafael Schnitzler (ph), and Tim Coleman
11 along with Jamie is leading the engagement.

12 AlixPartners, LLP, the company's primary financial
13 advisor was hired by Purdue in March 2019. In court today
14 are Jessie De La Conte (ph) and Barry False (ph).

15 Also here are Mark Kesselman who joined as
16 Purdue's general counsel in July 2018, and Roxana Aleali,
17 the equally indefatigable associate general counsel.

18 And, of course, Jon Lowne, our CFO and first day
19 declarant.

20 Given its complex situation, the company has other
21 law firms and professionals hard at work. The three primary
22 ones are Dechert, LLP, the company's primary civil
23 litigation counsel; Skadden Arps, which is primarily
24 handling the DOJ matters; and Wilmer Hale which has been
25 handling congressional matters.

1 Many Chapter 11 cases, both large and small, have
2 a great deal at issue. This one most assuredly is no
3 exception, and has lives as well as dollars at stake.

4 Moreover, because there is no secured or unsecured
5 debt, no material trade claims, no judgments, and because
6 more than 85 percent of the CUD claimants are governmental,
7 it is in essence America, itself, that stands to benefit or
8 lose from the success or failure of these reorganization
9 proceedings.

10 As the Court is no doubt aware, the debtors, the
11 debtors' ultimate owners, and a critical mass of
12 constituencies have reached an agreement in principal on a
13 settlement framework for resolving the over 2,625 lawsuits
14 now pending around the country, lawsuits that are draining
15 and destroying millions of dollars of estate value every
16 single week. Literally millions a week.

17 The agreed upon settlement framework involves
18 three primary components to resolve the litigations. First,
19 despite the absence of even a single judgment against any of
20 the debtors, the entirety of the debtors, every company,
21 every right, every dollar, every contract, every asset will
22 be transferred to a trust or other suitable post-emergent
23 structure to be administered by independent trustees and
24 directors chosen by and acting for the benefit of claimants
25 and, thus, the American public.

1 Lest there be any conclusion -- any confusion, let
2 me be clear and emphatic. The entirety of Purdue means
3 exactly that. Purdue's cash position of more than \$1
4 billion, all of its products, its material future revenues,
5 contract rights, intellectual property, insurance proceeds
6 as well as it's unique accumulated expertise, knowledge and
7 manufacturing capacity. The expectation is that this
8 transfer will be free and clear of Purdue's liabilities to
9 the fullest extent of the law.

10 Prong two is that Purdue's ultimately indirect
11 owners, the Sackler families, will contribute a minimum of
12 \$3 billion in additional funds on top of relinquishing their
13 ownership of 100 percent of Purdue over a seven-year period.

14 Finally, the Sacklers have agreed to engage in a
15 sales process for their XUS pharmaceutical companies that
16 will fund hopefully very material further cash payments out
17 of net proceeds on top of this incremental \$3 billion of
18 cash and the debtors' themselves.

19 The key group of plaintiffs in the pending actions
20 that have agreed to support the settlement framework include
21 24 State Attorney Generals and analogous officials of all
22 five permanently inhabited U.S. territories or
23 commonwealths, including Puerto Rico, which I believe is
24 bigger than 21 or so U.S. States.

25 In case anybody is curious, a thing I learned is

1 that the U.S. actually has 14 territories, but only five of
2 them have people on them.

3 As Your Honor -- technically, only five of them
4 are permanently inhabited. I guess maybe they have seasonal
5 people. I'm not -- I don't mean to diss (sic) the other
6 nine, but that's what --

7 (Laughter)

8 MR. HUEBNER: -- that's what they told us.

9 THE COURT: I think we should end the hearing
10 right now.

11 MR. HUEBNER: As Your Honor may have read, Purdue
12 had previously settled with Oklahoma and Kentucky, leaving
13 24 states and the District of Columbia not in the supporting
14 group.

15 While we know that some of these states are firmly
16 and in some cases passionately presently opposed, we are
17 hopeful that some are still forming and all are willing to
18 re-evaluate their views which we hope to inform during these
19 cases with facts and figures that may prove important to
20 them.

21 But even if one assumed arguendo that all of the
22 states not yet in the deal were and remain opposed, the
23 proverbial preliminary vote tally would not be 29 in favor
24 and 25 opposed because state or territory level actors are
25 merely one piece of this complex puzzle.

1 The settlement structure also has the unanimous
2 endorsement of the plaintiffs' executive committee, known as
3 the PEC, appointed by Judge Dan Polster in the Ohio MDL, and
4 also has the support of the three Kobe plaintiffs' firms in
5 the MDL.

6 As Your Honor may know, the PEC is the court-
7 appointed claimants' leadership team in the MDL. It is
8 comprised of attorneys at 19 law firms that collectively
9 represent over 1,000 counties and municipalities, including
10 cities, towns and villages, Native American tribes,
11 individual and third party payors, and is charged with
12 coordinating and organizing the approximately 2,000 MDL
13 plaintiffs and litigation tracks.

14 Thus, the clients of the PEC firms and the MDL co-
15 lead counsel may bring as many to -- may bring as many as
16 2,000 additional entities, most governmental, into the
17 supporter camp.

18 In another recent step towards progressing the
19 settlement structure, the supporting entities recently
20 formed a representative ad hoc committee and retained
21 professionals. The committee presently has the following
22 members: The States of Florida, Louisiana, Michigan,
23 Mississippi, New Mexico, Ohio, Tennessee, Texas and Utah.
24 The other members are the MDL PEC itself, the City of
25 Philadelphia, and Santa Clara County.

1 We have already begun engagement productively with
2 our professionals on multiple topics, including the first
3 day relief being requested today. And this committee is
4 especially important in this case because the firm in
5 movable position of the United States Trustee is that
6 governmental entities, which virtually all of our contingent
7 creditors are, are not eligible to serve on official
8 committees appointed by the U.S. Trustee.

9 We had no interest in litigating with the U.S.
10 Trustee on this issue. So to solve the problem of needing a
11 group smaller than 2,029 or so supporting counterparties to
12 negotiate and document a very complex deal with, and given
13 our UCC membership constraints, we instead encouraged and
14 will support an ad hoc committee of supporting claimants.

15 The settlement framework was arrived at after
16 months of intense, arduous, careful and complex negotiations
17 with dozens and dozens of relevant stakeholders as the deal
18 and its components evolved and evolved and evolved in an
19 attempt to build as big a tent as we possibly could, with
20 counterparties whose goals were by no means aligned in all
21 respects. The debtors have entered Chapter 11 to continue
22 to listen hard and to work to expand the number of parties
23 supporting the settlement framework and ultimately to
24 construct, confirm and effectuate a plan that resolves the
25 litigation through that framework.

1 Because so very much is at stake here, dare I say
2 for our country and its states, counties, cities, and towns,
3 billions of dollars of value, millions of doses of opioid
4 overdose rescue drugs, at no or low costs and, thus,
5 thousands of American lives to be improved and possibly even
6 saved.

7 Your Honor, I have practiced in our field for more
8 than 25 years and have always held two principles to be at
9 the core of the United States Bankruptcy system. The first
10 is the maximization of value. The second is the
11 distribution of that value to legitimate creditors in
12 accordance with the priorities established by federal law
13 with equality of treatment within those categories.

14 Although this case, probably the first
15 governmental mass tort mega Chapter 11 in U.S. history, will
16 almost certainly take many of us down new paths and into
17 some uncharted waters together, it is still actually those
18 two principles, maximization of value, which in this unusual
19 case is for the common good, not for bank lenders or bond
20 holders, hedge funds or private equity firms, and equality
21 of distribution to validate its stakeholders, which in most
22 cases are the American people themselves, that I believe
23 need to remain our unmoving guiding stars.

24 We recognize, Your Honor, that achieving these
25 objectives will not be easy. These Chapter 11 proceedings

1 will present no shortage of complex legal issues and
2 strongly held views on all sides.

3 Well, let me provide a spoiler alert right at or
4 at least near the outset of today's hearing. Today's goal
5 is a hearing that is quotidian and uninteresting. As the
6 Court has no doubt seen, we are not asking for any typical
7 relief at today's hearing and none at all concerning
8 injunctive or litigation related issues or relating in any
9 way to the settlement framework.

10 There will unfortunately likely be plenty of
11 opportunity over the next many months to discuss and join
12 issues on various difficult subjects: The shape and
13 contours of the global resolution; the debtors' past and
14 future conduct; the police power exception to the automatic
15 stay and 105 injunctions; standing; causation; channeling
16 injunctions; the apparent desire of some to just kill Purdue
17 regardless of the costs to a wide array of stakeholders and
18 other claimants. But today is not that day.

19 Rather, today is the day hopefully to help
20 facilitate the smooth transition of a complex corporate
21 enterprise into Chapter 11, and to minimized value loss and
22 operational disruption that might have otherwise resulted
23 from the Chapter 11 filing.

24 And this is so very important here because we
25 cannot forget that Purdue is a heavily regulated

1 pharmaceutical company, the manufacturers, among other
2 things, multiple FDA approved Schedule II opioid medications
3 prescribed to hundreds of thousands of Americans. The
4 safety, security and stability of Purdue's operations and of
5 its controlled substance inventory and work in progress is
6 of grave importance.

7 Like many who have appeared before you, Your
8 Honor, I am well aware that the Court has read every page of
9 the many pleadings that we have submitted and no doubt has a
10 tabbed binder that identifies some things we got wrong or
11 typos that we missed in the intense march to filing.
12 Apologies in advance for these unintended peccadilloes.

13 A fair amount of the litigation history and
14 background of our business was laid out in the informational
15 brief that we have filed, and there will be hearings more
16 relevant to these topics coming up swiftly. Thus, I will
17 not be giving any overview of the debtors' operation or
18 structure, of its products, or of the contingent,
19 unliquidated, and disputed liabilities that have been
20 asserted against the debtors this morning.

21 We are not here today to litigation or really even
22 to discuss these issues or the claims. There are, in fact,
23 only three items that I would like to address before we turn
24 to those first day motions themselves.

25 The first is Purdue's current governance conduct

1 and practices. It is my intention to speak only to the
2 present with no comments made or implied about the past. I
3 would like to start by discussing Purdue's board of
4 directors briefly, which will be instrumental to the success
5 of these proceedings.

6 No member of the Sackler family is currently on
7 the board or employed by the company. The resignation of
8 the last member came over eight months ago, and others
9 occurred during or prior to 2018.

10 Davis Polk does not, has not, and will not
11 represent the Sackler families. We have represented only
12 Purdue from the opening moments of our engagement.

13 The current board has seven directors, at least
14 three of whom may well be known to some or many in the
15 courtroom today. Robert S., known as Steve, Miller, who
16 chairs the board has (indiscernible) a nearly 50-year career
17 at the upper echelons of corporate restructuring, including
18 the successful restructurings of Chrysler, which none of the
19 associates (indiscernible) ever heard of, during which he
20 served as the CFO; Delphi, where he was chairman and CEO;
21 and AIG where he was non-executive chairman. Mr. Miller
22 joined the board in July 2018.

23 Kenneth Buckfire is among the most senior
24 financial professionals in our industry. He has been
25 involved in dozens of mega-cases throughout his career,

1 including serving as the primary advisor to the City of
2 Detroit in its bankruptcy. Mr. Buckfire joined the board in
3 May 2019.

4 John Dubel is also deeply credentialed with over
5 37 years of experience, specifically in connection with the
6 leadership of complex, global class-action related Chapter
7 11 proceedings. He was, among many other things, the CEO of
8 FGIC, the country -- one of the country's three largest
9 monoline insurers in its rehabilitation and served as the
10 CRO and then CEO of SunEdison, which I believe was the
11 largest natural energy failure in U.S. history.

12 Mike Cola joined the board about 14 months ago and
13 has decades of experience and wisdom accumulated in senior
14 positions at AstraZeneca and AstraMerck as well as serving
15 as the president of Shire, PLC.

16 John Dubel chairs and Mister's Miller, Buckfire
17 and Cola serve on the special committee that has exclusive,
18 delegated authority for all transactions with and all
19 potential and litigation and claims against the owners and
20 all related parties.

21 Thus, four of Purdue's seven directors who
22 constitute a majority of the board and the totality of the
23 special committee are beyond blue chip recent arrivals
24 without any prior connections to the company or to the
25 family.

1 And having myself been endlessly run ragged by
2 them month after month, I would happily testify under oath
3 in any forum that they are strong, independent, demanding
4 and fully engaged.

5 Purdue's remaining three directors, Cecil Pickett,
6 Peter Bore (ph), and Turnaron Colley (ph), bring decades of
7 experience and knowledge about Purdue's business and the
8 pharmaceutical industry. One has a PhD in cell biology, one
9 has a PhD in physics and one merely is an experienced
10 lawyer.

11 That brings me, Your Honor, to Purdue's current
12 business practices and its conduct as a pharmaceutical
13 company moving forward. Certain past practices throughout
14 the core of the voluminous litigation against the company
15 will undoubtedly be the subject of future proceedings.
16 These include allegations with respect to detailing or
17 promoting to prescribers Oxycontin and other opioid
18 medications.

19 Again, I will not be discussing any of this today
20 because it is not within the scope of today's hearing or any
21 of the first day motions. And because it is in the past.

22 All promoting of Oxycontin and all other opioid
23 medications to prescribers by Purdue ceased no later than 20
24 months ago in February 2018. At that time Purdue began the
25 process of entirely eliminating its opioid sales force.

1 Today, Purdue no longer has any sales representatives, not
2 one, promoting any opioid products to any prescribers.

3 As was referenced in the first day papers, Purdue
4 intends to take the novel approach of seeking from this
5 Court an injunction against itself that prohibits it from
6 engaging in various categories of conduct, conduct like the
7 promotion of opioids or opioid products through sales
8 representatives, speakers or key opinion leaders, or medical
9 educational programs, conduct that is at the core of the
10 plaintiffs' claims against the debtors, but has already
11 ceased almost two years ago.

12 I know of no precedent for such a request. So to
13 be clear, the debtors will soon as you to -- will soon
14 voluntarily ask you to subject us to the coercive power of
15 this Court and potential contempt sanctions. We will be
16 doing this to give the Court and all parties in interest
17 absolute comfort that Purdue in no way, shape or form is
18 using Chapter 11 as an improper refuge for any of the types
19 of past conduct that have been challenged and are the
20 subject of litigation.

21 Which is an appropriate segway to the second of
22 the two items that I would like to briefly highlight today.
23 Over the past hours, days, weeks and months, some of the
24 litigants pursuing their claims against Purdue have
25 repeatedly pounded certain themes into the media again and

1 again. Themes like we will never let Purdue escape justice
2 in Chapter 11. We will still get our day in court no matter
3 where Purdue runs, even in Chapter 11. Candidly, I have
4 always been rather perplexed by these and similar
5 statements.

6 In reality, Your Honor, why is Purdue in Chapter
7 11? First and foremost, Purdue, despite having no judgments
8 against it, is in Chapter 11 to implement a global
9 resolution that maximizes its value and does not see that
10 value continuing to be relentlessly and needlessly
11 diminished.

12 Purdue is also here to build further support for
13 the settlement framework that would transfer 100 percent of
14 the debtors to its contingent claimants.

15 Your Honor, Purdue is not shielding itself from
16 these claimants. It's giving itself to these claimants
17 without them even needing to prevail in their litigations
18 as part of the global resolution of this unsustainable
19 runaway litigation.

20 Purdue is in Chapter 11 precisely to address the
21 litigation morass that it faces, not to evade it. There
22 were five cases filed between 2014 and 2016, five. Then
23 there were 300 in 2017. Then there were 1,500 in 2018. And
24 the 2019 count is 800 and climbing very quickly. Today,
25 Purdue faces over 2,625 separate lawsuits, with the number

1 of copycat lawsuits climbing literally daily.

2 These lawsuits allege that Purdue is responsible
3 for creating the national opioid crisis and is potentially
4 liable for hundreds of billions of dollars of damages. As a
5 result, Purdue is now mired in proceedings in almost every
6 conceivable forum in the United States, including
7 administrative proceedings, state trial courts, state
8 appellate courts, state supreme courts, federal district
9 courts, federal appellate courts, and even the United States
10 Supreme Court. There are approximately 120 tribal lawsuits
11 already in or pending for transfer to the Ohio MDL as well
12 as tribal lawsuits in state courts.

13 Over the course of the last year there has been an
14 almost unprecedented scramble of hospitals and cities,
15 states and counties, Indian tribes and others deploying
16 varied and unusual techniques seeking to get to the front of
17 the litigation line to secure early or outsized recoveries.

18 How can anyone genuinely believe that this chaotic
19 nostrum with governments even suing each other about which
20 one of them has the right to sue Purdue should continue, let
21 alone claim that this is the path to fairness and justice.

22 And it, of course, should come as no surprise that
23 the soft and hard litigation costs and burdens associated
24 with this litigation are staggering. Legal expenses are by
25 far Purdue's largest category of operating expense.

1 Professional bills are now topping \$250 million a year, and
2 that is just one element of the hard costs.

3 The path outside of Chapter 11 had an unavoidable
4 conclusion. Lawyers would have made hundreds of millions of
5 dollars or more as the ever increasingly battered company
6 continued to direct its dwindling cash balance to defending
7 these still multiplying litigations, the balance that was
8 diminishing because of these litigations.

9 And even if arguendo Purdue chose and had the
10 resources to fight every single lawsuit to conclusion and
11 ultimately would have been vindicated at either the trial or
12 an appellate level, it is all but certain that Purdue would
13 have had to end up in Chapter 11 in any event because even
14 at the trial level losing a mere one percent of the lawsuits
15 is still losing 26 big lawsuits.

16 Had Purdue chosen to battle on, it would likely
17 have ended up here in any event, but with only a small
18 fraction of the billions of dollars of lifesaving value that
19 it has available at present.

20 And, Your Honor, to switch the lens for a minute
21 because this really should not be forgotten, we shouldn't
22 lose sight of the fact that the settlement framework
23 radically declaration-risks the situation for the
24 plaintiffs. They collectively no longer have to race each
25 other to dozens of courthouses, prevail at hundreds of

1 trials or appeals, and then go actually recover on their
2 judgments, potentially in lots of places against the people
3 they believe are liable. The full company and billions more
4 in cash are on offer as soon as we can close.

5 Simply put, Your Honor, continuing to litigate the
6 crushing multitude of cases outside of Chapter 11 would
7 benefit no one except lawyers and other professionals.
8 Given that 100 percent of Purdue is being tendered to settle
9 the kaleidoscope of litigations, despite not having yet lost
10 a case, it can scarcely be said that Purdue has come here to
11 escape justice.

12 Rather, Purdue is here to pause and then resolve
13 the tragedy of the commons that will certainly not lead to
14 justice or to better, fairer or faster recoveries for
15 stakeholders.

16 Which brings me to my third and last item. We
17 will understand that many parties have raised questions or
18 made serious allegations about a variety of things
19 including, for example, past transfers by Purdue and
20 transactions with members of the Sackler families and
21 related entities.

22 And, of course, the company and its advisors well
23 understand that as part of ultimately approving the
24 settlement, some of these issues must be ultimately
25 understood, be understood better by the Court and by key

1 stakeholders under appropriate, protective orders and
2 confidentiality agreements.

3 Moreover, perhaps I am being unduly optimistic,
4 but I actually remain hopeful that parties may be more
5 willing to settle and come on board with the framework as
6 they learn more about certain facts and numbers that they
7 don't currently know.

8 This special committee which has full and
9 exclusive delegated authority with respect to all Sackler
10 facing issues has taken and will continue to take very
11 seriously the allegations raised in various lawsuits around
12 the country regarding the management of Purdue by its
13 owners, especially with respect to causes of action that
14 automatically and immediately vested in the estates upon a
15 Chapter 11 filing.

16 Work on these issues began months ago and is
17 ongoing. Dedicated professionals at Davis Polk,
18 AlixPartners and Bates White have spent more than 12,500
19 hours on these projects to date at the direction and under
20 the supervision of the special committee, which has been
21 meeting multiple times a month on these issues.

22 Let me give one example so that it's more
23 concrete. A forensic investigation team at AlixPartners has
24 been working for months with counsel at Davis Polk and
25 valuation experts at Bates White analyzing all transfers and

1 transactions with the shareholders and their affiliates from
2 and after January 1, 2008. This work, covering a period
3 stretching back more than a decade, is not yet completed,
4 but the draft reports already exceed 700 pages in length and
5 counting.

6 Under appropriate protective orders and at the
7 right time, the debtors are fully prepared to talk and
8 indeed welcome discussions with relevant parties about this
9 and other material investigations.

10 And this is quite consistent with several
11 transparency initiatives in which Purdue, and
12 parenthetically I personally, have been involved for quite a
13 while. Starting on or about October 3rd, 2018, a detailed
14 presentation with written materials was made to various
15 groups of plaintiffs, including both multiple MDL parties
16 and states with detailed corporate and financial information
17 about Purdue.

18 It also included all cash dividends paid out by
19 Purdue since January 1, 2015. But they asked for more. So
20 starting a few weeks later after we could pull it together,
21 on or about October 19th, 2018, in response to these
22 requests, a dense 15-page deck was presented and provided at
23 several meetings to multiple parties which included, among
24 many other things, a recounting of all transfers made by
25 Purdue up to its parent company for a 24-year period from

1 January 1, 1995 to September 30th, 2018.

2 This detailed information, which has since been
3 checked and refined by AlixPartners, was presented and
4 voluntarily given over to the plaintiffs who got it and have
5 had it for almost a year.

6 One other noteworthy example as I move towards
7 conclusion. Over the last 18 months intense work has been
8 underway to ensure that all contracts and relationships of
9 any kind between Purdue and any non-Purdue Sackler entity
10 are and remain in Purdue's best interest.

11 In one recent push, approximately 140 of such
12 contracts were reviewed. Of these 140, the special
13 committee decided to terminate 49, amend 2, and leave 88 in
14 place as still being in Purdue's best interest.

15 But, again, these are issues for another day. I
16 mention them to give the Court and others insight into the
17 seriousness with which the special committee and Purdue's
18 independent professionals have been and continue to take
19 their weighty responsibilities. The company and its
20 advisors well understand that they are fiduciaries for all.

21 One very last thing, Your Honor, before turning to
22 the first day motions, and you might remember I may have
23 concluded either (indiscernible) with this request. Davis
24 Polk is by no means afraid to litigation issues when it is
25 unavoidable. But we strongly prefer consensual resolutions

1 whenever possible.

2 We would like to make it clear to all parties,
3 whether in Court or on the phone, that our way is always the
4 way of attempted consensual resolution. The omnibus
5 hearings of which we are most proud, which has been -- it's
6 been historically true in our cases are the ones that are
7 canceled because every single thing has been resolved.

8 So, please, pick up the phone and call us. Use
9 your device and e-mail us, and just discuss things before
10 filing papers. We stand ready just about 24 hours a day to
11 intake and try to address issues or problems with anyone who
12 has a problem or thinks they have a problem.

13 Your Honor, I'm happy to answer any questions or,
14 if it pleases the Court, we would propose to turn at this
15 point to the first day relief we're seeking.

16 THE COURT: Okay. Why don't we proceed with the
17 agenda?

18 MR. HUEBNER: Sure.

19 Just to make sure someone does it, I guess, let me
20 first before turning over the podium, move the admission of
21 the Jon Lowne declaration which is the evidentiary support
22 of our 14 motions and two evidence.

23 THE COURT: Okay. I reviewed that declaration.
24 If anyone wants to cross-examine Mr. Lowne on any particular
25 motion that comes up, you should let me know. As far as the

1 declaration as a whole is concerned, I don't have any
2 questions on it. I may have questions when we get to
3 individual motions.

4 But with that said I don't know if anyone objects
5 to the -- anything in it as far as its admission, having
6 reserved their right to cross-examine Mr. Lowne if they want
7 to in connection with any particular motion.

8 MR. HUEBNER: Your Honor, at this point I believe
9 I'm turning the podium over to --

10 THE COURT: Okay. So I --

11 MR. HUEBNER: -- Mr. --

12 THE COURT: -- I will admit it as Exhibit 1.

13 MR. HUEBNER: Great. Thank you, Your Honor.

14 Chris Robertson, Your Honor, of our firm.

15 THE COURT: Okay.

16 (Pause)

17 MR. ROBERTSON: Good morning, Your Honor.

18 Christopher Robertson, Davis Polk & Wardwell on behalf of
19 the debtors.

20 Your Honor, the first motion on the agenda is the
21 debtor's joint administration motion at -- that's at Docket
22 Number 2, Agenda Number 4.

23 Your Honor, there are 24 debtor affiliates in
24 these Chapter 11 cases. For administrative convenience the
25 debtors have requested that all cases be jointly

1 administered for procedural purposes only under the case of
2 the debtors' main operating entity, Purdue Pharma L.P., Case
3 Number 19-23649.

4 We have received no comments to this motion or
5 proposed order. Unless Your Honor has any questions
6 regarding the relief requested in this motion, the debtors'
7 respectfully request that the relief requested be granted.

8 THE COURT: Okay. Does anyone have anything to
9 say on this motion?

10 All right. I will grant the motion. I've
11 reviewed it. Clearly, with this multi-debtor case and based
12 on the pleadings before me, joint administration is
13 warranted. I've also reviewed the order and the proposed
14 caption, both of which are fine with me. So you can e-mail
15 that to chambers --

16 MR. ROBERTSON: Thank you, Your Honor.

17 THE COURT: -- for entry.

18 MR. ROBERTSON: Moving on to the next agenda item,
19 Item Number 5, this is the case management motion. That's
20 at Docket Number 16.

21 Your Honor, this motion -- these procedures are in
22 line with the procedures Your Honor has entered in other
23 cases. We circulated a draft to the U.S. Trustee and
24 incorporated informal comments received from Mr.
25 Schwartzberg's office.

1 Your Honor, I would also like to clarify two
2 points in the procedures. One, in paragraph 11 of the
3 procedures we would like to include the ad hoc committee as
4 a party on the service list and, of course, any other party
5 that requests service under Rule 2002 will also be included
6 on that list.

7 We would also like to delete the last sentence of
8 paragraph 25 of the procedures. And, Your Honor, that
9 paragraph -- would you like me to turn you to it? Sorry.
10 Bear with me. That paragraph is on page 13 of the
11 procedures. It provided, notwithstanding any
12 (indiscernible) contrary herein, the debtors and the
13 official committee and the U.S. Trustee, but no other party,
14 are authorized to file statements in support of request for
15 relief by the reply deadline defined below. We propose to
16 delete that from the form of procedures.

17 THE COURT: Okay.

18 MR. ROBERTSON: We have not received any other
19 comments on the form of order of the procedures. Unless
20 Your Honor has any questions, we would ask that it be
21 granted.

22 THE COURT: Okay. Does anyone have anything to
23 say on the case management motion?

24 All right. I've reviewed it and I appreciate that
25 you've largely followed similar orders that I've entered in

1 similar cases.

2 But there are always improvement and I'm going to
3 give you a markup that has a few improvements in them --

4 MR. ROBERTSON: Certainly.

5 THE COURT: -- which I think are going to be self-
6 explanatory. Some of them just track the chambers website.
7 For example, on submission of orders, if there's been no
8 objection or after notice of presentment, one reflects a
9 similar one I had in dealing with issues about e-mail
10 service that I wrote an opinion on last month, which says
11 that -- which reflects that people are sometimes wary to
12 open attachments.

13 So the e-mail subject line or the body of the
14 email service should now say, in addition to what you have
15 here, which is appropriate, that the attachments are also
16 available on the docket. So if people are afraid to -- or
17 told by their IT people not to open attachments, they know
18 they can go to the docket.

19 MR. ROBERTSON: Certainly.

20 THE COURT: I think the rest will be self-
21 explanatory.

22 I left in the language for seeking shortened
23 notice by order to show cause. But I want everyone to know
24 that 99 percent of the time I don't like to enter an order
25 to show cause shortening notice. If I think there is at

1 least a colorable basis to have shortened notice, I instead
2 instruct the movant to file not only their motion for
3 underlying relief, but also their request for a hearing on
4 shortened notice, and to notice them both for the hearing
5 date. So that at least gives someone that much time to come
6 up with an explanation as to why I shouldn't be hearing it
7 on shortened notice rather than just predetermining that
8 issue in an order to show cause.

9 So most of the time that's what will be the
10 resolution. But I haven't thought of a way for people to
11 ask me to schedule the hearing other than the show cause
12 language. So I've left it in.

13 But with those changes, which you can take, I'll
14 grant the motion.

15 MR. ROBERTSON: May I approach?

16 THE COURT: Yes. And obviously this is a first
17 day motion. I'm not going to require it to be dealt with as
18 an interim order. But once a committee is formed, and
19 perhaps an ad hoc committee, in addition, they can always
20 speak to their view about changes that they would like. And
21 if they make sense, you can submit them.

22 MR. ROBERTSON: Of course. Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. ROBERTSON: Moving onto the next agenda item
25 is Item Number 6, the motion at Docket Number 5. This is

1 the cash management order. Pursuant to this motion the
2 debtors seek authority to continue to use their existing
3 cash management system from the operations of PPLP and its
4 subsidiaries, maintain their existing bank accounts, open
5 and close bank accounts, and maintain their existing
6 business forms.

7 The debtors integrated cash management system is
8 discussed in detail in the motion. Attached the motion as
9 Exhibit D is a diagram that shows, you know, the inflows and
10 out flows through the system.

11 The United States Trustee has provided I believe
12 three informal comments in the -- to the form of orders. If
13 Your Honor would like me to walk you through those.

14 THE COURT: Sure.

15 MR. ROBERTSON: So, first, in paragraph 13 of the
16 interim order, the debtors agree that any new accounts
17 opened at FDIC insured banks that are not authorized
18 depositories shall not hold average monthly balances in
19 excess of the FDIC insurance limit.

20 Second, to the extent reasonably practical --

21 THE COURT: Did the debtors --

22 MR. ROBERTSON: Oh, sorry.

23 THE COURT: -- believe they could comply with
24 that?

25 MR. ROBERTSON: I believe that we can. It only

1 applies to banks that are FDIC insured but not authorized
2 depositories.

3 THE COURT: Right. There --

4 MR. ROBERTSON: And --

5 THE COURT: -- are fewer and fewer authorized
6 depositories these days, but --

7 (Laughter)

8 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
9 for the U.S. Trustee's Office. The bulk of their accounts,
10 and their new accounts that are coming in are authorized
11 depositories.

12 THE COURT: Okay.

13 MR. ROBERTSON: That's right. Pecos Bank is the
14 most, Your Honor.

15 THE COURT: Okay.

16 MR. ROBERTSON: Second, to the extent reasonably
17 practicable the debtor shall mark debtor-in-possession on
18 business forms and checks that are electronically generated.

19 And then third, this with respect to paragraph 19
20 in the order. I would like to read an agreement into the
21 record. With respect to the investment accounts, paragraph
22 19, interim order, will be revised to provide that the
23 continuation of the investment accounts is approved on an
24 interim basis, and within 45 days we will work to get the
25 U.S. Trustee comfortable with the terms of the investment

1 accounts and either (a) get in full compliance with Section
2 345 or (b) obtain this Court's approval for any deviation
3 from 345 under the final order.

4 Other than those comments -- and I would pause if
5 Mr. Schwartzberg wants to add anything.

6 MR. SCHWARTZBERG: Yes, Your Honor. The counsel
7 accurately reflected our agreement. We had concerns that
8 the debtor references three accounts that are not authorized
9 depositories and that do not appear as of now to be in
10 compliance with 345. We are not aware of what's in the
11 account. We are not aware of how much is in the account.
12 So we need more information. And we hope to work for the
13 debtors -- with the debtors in the next few days or weeks on
14 this issue. But we may be back before Your Honor on this if
15 they don't come into compliance.

16 THE COURT: Okay. That's fine.

17 Have you gotten a date for a final hearing on
18 these first day motions from Ms. Lee?

19 MR. ROBERTSON: We have not, Your Honor.

20 THE COURT: All right. Well, I'm sure she'll give
21 you one. But it obviously needs to be more than 15 days
22 from the -- from today. So we're talking sometime in
23 October.

24 MR. ROBERTSON: Yeah. Certainly, Your Honor.

25 THE COURT: Okay. Does anyone have anything

1 further to say on this motion?

2 All right. I have reviewed it and with the
3 changes agreed with the U.S. Trustee I'll grant the motion
4 on an interim basis. It's appropriate for the moving state
5 of the motion to grant this relief.

6 MR. ROBERTSON: Thank you, Your Honor.

7 Moving onto the next motion on the agenda is what
8 we call the creditor list and personal information motion.
9 This is Item 7 on the agenda. It can be found at Docket
10 Number 13.

11 Your Honor, in this motion we're seeking authority
12 to file a consolidated list of the top 50 creditors instead
13 of filing separate lists for each debtor, authority to
14 redact certain personal information for individuals, and
15 approval of procedures for service of notice and
16 commencement.

17 The motion also seeks to authorize the debtors'
18 notice and claims agent to withhold publication of claims
19 filed by individuals until entry of the bar date order or
20 other order of the Court.

21 The debtors and their notice of claims agent are
22 sensitive to privacy concerns of individuals who may file
23 claims containing medical or other sensitive information,
24 given the nature of these cases. Absent the relief sought
25 herein, the debtors and the notice and claims agent would be

1 obligated to publish such information and hold, even if the
2 information was personally identifiable information
3 protected by HIPPA, for instance.

4 The debtors intend to address these concerns more
5 fulsomely in the context of the bar date order. But until
6 then, we would request authority to suppress any individual
7 proof of claim that may be filed and to withhold the names
8 and addresses of any filers.

9 So I'll pause there if Your Honor has any
10 questions.

11 THE COURT: I guess the -- this -- this is
12 obviously, to me at least, a worthwhile and important
13 direction to the claims and noticing agent. Right now the
14 order says authorized to suppress, and my only -- I don't
15 want there to be an implication that they're not directed to
16 where there is a legal obligation to do so.

17 MR. SCHWARTZBERG: Your Honor, I don't know if I
18 can speak now or if you --

19 THE COURT: Sure. No. Go ahead.

20 MR. SCHWARTZBERG: Yeah.

21 THE COURT: If it's on this point.

22 MR. SCHWARTZBERG: Yeah. Yes. It is exactly on
23 this point.

24 THE COURT: Okay.

25 MR. SCHWARTZBERG: Your Honor, the redaction

1 requests or the sealing requests is broken into two,
2 employees and creditors. As to the creditors, the U.S.
3 Trustee has objections.

4 First, the application indicates the names and all
5 the information of creditors on every document, including
6 the creditor matrix which is being filed today. The
7 creditor matrix isn't going to contain HIPPA or personal
8 information. It's just going to contain their names,
9 perhaps their addresses and the amount of claim or the
10 number -- the type of claim.

11 But nobody's putting forth today information
12 that's going to be personally identifiable information as
13 defined under the code. Names and the addresses of the
14 creditors should be out there. And that will allow the
15 creditors to coordinate, perhaps contact each other, and go
16 forward as a committee if they want, as an ad hoc committee.
17 But to suppress that right now --

18 THE COURT: Well, I was just focusing on the
19 portion that focuses on personally identifiable information
20 first.

21 MR. SCHWARTZBERG: If we leave it to that right
22 now, Your Honor, the debtors are not filing any personally
23 identifiable information of these individuals. They're
24 seeking to, I think, basically not put their names or
25 addresses on the creditor matrix, on the schedule --

1 THE COURT: Well, no. But -- I'm not being clear.
2 There are two aspects of the relief sought. One pertains to
3 personally identifiable information as defined, I think, in
4 the Bankruptcy Code and rules. The other goes to names and
5 addresses and things like that. I was focusing on the first
6 part.

7 MR. SCHWARTZBERG: Right now, Your Honor, it's
8 just the debtors. If we're talking about the claims agent,
9 the claims agent can be directed to just put down, say, tort
10 claim, not the whole list of --

11 THE COURT: Right.

12 MR. SCHWARTZBERG: -- other names and --

13 THE COURT: So does anyone have -- okay. So we're
14 on the same page on that point.

15 Does anyone have an issue with adding language to
16 say that nothing herein relieves any part of an obligation
17 or under applicable law to suppress personally identifiable
18 information? I'm not deciding what that obligation is
19 today, but I don't want there to be any implication here
20 that somehow this order supersedes such an obligation.

21 MR. SCHWARTZBERG: As long as the creditor matrix
22 has the names and --

23 THE COURT: It's a separate issue.

24 MR. SCHWARTZBERG: So as long as --

25 THE COURT: I just -- I'm just focusing on PII

1 right now.

2 MR. SCHWARTZBERG: In the claims --

3 THE COURT: Anywhere. If it's personally
4 identifiable information.

5 MR. SCHWARTZBERG: Clearly, no party is allowed to
6 --

7 THE COURT: Right.

8 MR. SCHWARTZBERG: -- put that forth in the public
9 realm. But I --

10 THE COURT: Right.

11 MR. SCHWARTZBERG: -- think even under the debtors
12 -- the individual --

13 THE COURT: We're going to get to that in a
14 second. Okay.

15 MR. WISEMAN: Your Honor, Shye (ph) Wiseman from
16 Prime Clerk.

17 THE COURT: Good morning.

18 MR. WISEMAN: Your Honor, the local rules make
19 very clear that the claims agent has no authority absent an
20 order of the Court to suppress anything no matter --

21 THE COURT: I understand.

22 MR. WISEMAN: -- what information is contained.
23 And I just don't want an implication that there is some
24 obligation because, in fact, the direction is to --

25 THE COURT: No. I agree with that. But I don't

1 want there to be implication that there isn't an obligation
2 to someone either. So I just want it to be neutral on that
3 point.

4 MR. WISEMAN: Okay.

5 THE COURT: Okay. All right.

6 So the second point, we'll now get to it.

7 MR. ROBERTSON: Right. So turning back to the
8 names on the creditor matrix --

9 THE COURT: Right.

10 MR. ROBERTSON: -- and I think in many cases it's
11 become standard to not include, for instance, current
12 employees' addresses, home addresses on the schedules
13 instead of use a business address.

14 In this case, you know, those concerns are
15 anything heightened just giving the -- you know, the
16 extraordinary circumstances of these cases and everything
17 surrounding them. And so, you know, we are, you know, just
18 as we were being very sensitive in the context of individual
19 claimants, you know, we are very sensitive to the company's
20 current employees and others whose, you know, personal home
21 addresses would appear on these schedules.

22 THE COURT: Well, who would be the others besides
23 the employees?

24 MR. ROBERTSON: I don't -- I believe this relief
25 is primarily targeted towards the current employees, Your

1 Honor.

2 THE COURT: Okay.

3 MR. SCHWARTZBERG: Your Honor, as to the employees
4 on an interim basis we do not have an objection because
5 obviously once that information is out there, it's out
6 there. But we believe if they're going to come back on a
7 final basis, they should come back on a final basis and
8 provide a more fulsome reason why this needs to be redacted
9 from the public record for -- on a permanent basis. I don't
10 think they've put forth sufficient evidence indicating that
11 this needs to be suppressed forever.

12 THE COURT: Okay. Well, you can certainly give a
13 business address, for example.

14 UNIDENTIFIED SPEAKER: That's what we're doing.

15 MR. ROBERTSON: Yeah. That's what --

16 MR. SCHWARTZBERG: That's what they said. They
17 put the business addresses for the --

18 THE COURT: Right, which, I mean, if you --

19 MR. ROBERTSON: And --

20 THE COURT: This has come up in a couple of my
21 cases already, and I forget which of you two argued this
22 point and I generally agree with you. But it seems to me
23 the issue is enabling people to communicate with each other.
24 But my experience is that employees generally find ways to
25 communicate with each other. And if someone else wants to

1 communicate with them for legitimate purpose, they can go
2 through the business address because that's where people get
3 their information.

4 MR. SCHWARTZBERG: As I said, on the interim
5 basis, Your Honor, for the --

6 THE COURT: Okay.

7 MR. SCHWARTZBERG: -- business employees we --

8 MR. HUEBNER: Your Honor, I hope Mr. Robertson
9 will forgive me. I'm going to jump in and help for just a
10 minute.

11 We've litigated this issue in several recent cases
12 as well and resolved it where we can. We think that
13 business addresses, frankly, in all cases. In the typical
14 case the concern, which is very real, is relating to
15 poaching and things like that.

16 This case is very different and we've already been
17 very clear as to why and, frankly, we would prefer not to
18 have to put in a lot of evidence about this at the final
19 hearing because we think the issue is so obvious.

20 THE COURT: Well --

21 MR. HUEBNER: There have been death threats to
22 multiple people involved with this company. There have been
23 demonstrations at people's homes.

24 THE COURT: Well, I --

25 MR. HUEBNER: There have been protests --

1 THE COURT: We're not putting their home addresses
2 on it.

3 MR. HUEBNER: No. But that's my point. Mr.
4 Schwartzberg is saying it can't go in the final unless we
5 put on a written record.

6 THE COURT: Well, we'll --

7 MR. HUEBNER: And --

8 THE COURT: -- we'll deal with that then.

9 MR. HUEBNER: -- I just wanted to -- we've already
10 made clear about the reason for this.

11 THE COURT: Okay.

12 MR. HUEBNER: And we would like to find a more
13 subtle way to address it without having to list a litany of
14 things which only makes our situation more difficult.

15 THE COURT: Fine. In any event, for the interim
16 order we're dealing with business addresses --

17 MR. ROBERTSON: Thank you, Your Honor.

18 THE COURT: -- for employees and former employees.
19 Okay.

20 MR. ROBERTSON: I'm sorry, Your Honor. If I may
21 proceed to Agenda Item Number 8. It's at Docket --

22 THE COURT: Well, I --

23 MR. ROBERTSON: -- Number 4.

24 THE COURT: So does anyone else have anything
25 further to say on this motion?

1 MR. SCHWARTZBERG: Just because I'm dense, Your
2 Honor, on the creditor matrix, the names and addresses of
3 the creditors, I'm not exactly 100 percent sure how Your
4 Honor ruled, but I believe that they should be included on
5 the creditor matrix that's going to be filed.

6 THE COURT: That -- as -- with their business
7 address.

8 MR. SCHWARTZBERG: We're now talking about
9 creditors, not the employees.

10 THE COURT: Well, I don't -- you -- I didn't think
11 you had an issue with creditors, just their name and address
12 because that's not --

13 MR. ROBERTSON: At this time I don't think that
14 there are --

15 THE COURT: -- personally identifiable
16 information.

17 MR. ROBERTSON: Right. I don't think that there
18 are creditors at this time that would fall into this bucket.
19 Now I would reserve, you know, it's kind of part and parcel
20 with the --

21 THE COURT: If there's an employee creditor that
22 would go on the matrix, it would be the name and business
23 address.

24 MR. ROBERTSON: That's correct, Your Honor.

25 MR. SCHWARTZBERG: We're talking beyond employees.

1 If there are other creditors out there.

2 THE COURT: I don't think they had an issue with
3 that because there's no personally identifiable information.

4 MR. ROBERTSON: Your Honor --

5 THE COURT: It's just the name and address.

6 MR. ROBERTSON: -- let me add one point just to
7 make sure. To the extent a claim is filed that is subject
8 to our claims suppression --

9 THE COURT: That's a separate --

10 MR. ROBERTSON: -- procedures.

11 THE COURT: -- issue. Yeah.

12 MR. ROBERTSON: We don't want to then say, well,
13 they filed this claim and they have -- you know, so as long
14 as those two things are not put together --

15 THE COURT: Proofs of claim, they're -- Prime
16 Clerk, as claims agent, is authorized to suppress PII if
17 someone inadvertently puts in their social security number,
18 for example, or something like that.

19 MR. SCHWARTZBERG: But their names are not being
20 suppressed.

21 THE COURT: Correct.

22 MR. SCHWARTZBERG: Thank you, Your Honor.

23 THE COURT: Did you have something to say?

24 MR. MARKOWITZ: I did. Your Honor, Scott
25 Markowitz. I was wanting -- we put individual plaintiffs

1 into our lawsuit, would it be A, B, C or Mr. X care of the
2 law firm or are we listing the creditor on the matrix? We
3 named our lawsuit by the individual parties.

4 THE COURT: I don't know. I mean, this motion
5 doesn't deal with that issue.

6 MR. ROBERTSON: It does not.

7 THE COURT: I mean, that's up to the -- if the
8 debtors -- the debtors are supposed to prepare the matrix,
9 or the claims agent with the debtors will do so. And I'm
10 assuming they'll do it in a way that --

11 MR. MARKOWITZ: They're asking to exclude that and
12 that's the way --

13 THE COURT: No. No. I -- it's not -- no. I
14 don't think so.

15 MR. ROBERTSON: And, also, the bar date motion
16 will address, you know, these and many other concerns as far
17 --

18 THE COURT: There's nothing in this motion that
19 excludes --

20 MR. MARKOWITZ: Okay.

21 THE COURT: -- the name and address of --

22 MR. MARKOWITZ: A plaintiff.

23 THE COURT: -- of a creditor.

24 Okay. So I will grant the motion. I actually --
25 I think the only change to it is just the -- I think that

1 would say nothing herein relieves any part of any obligation
2 under applicable regulation of law --

3 MR. ROBERTSON: Thank you, Your Honor.

4 THE COURT: -- to suppress PII.

5 MR. ROBERTSON: Thank you, Your Honor.

6 Moving onto the next motion on our agenda. This
7 is Agenda Item Number 8, Docket Entry Number 4. This is the
8 Prime Clerk retention application under Section 156(c).

9 We vetted the form of application with the clerk's
10 office. They had actually raised one question that related
11 to language that would permit Prime Clerk to limit public
12 access to the claims register upon further order of the
13 court. This is sort of the bone suspenders for Prime Clerk
14 to make sure that the retention application didn't override
15 the relief that Your Honor just approved in the prior
16 motion. You know, we explained that rationale to the
17 clerk's office and they were understanding of our concerns.

18 I know that the U.S. Trustee had raised some
19 issues with the Prime Clerk retention and I would let Mr.
20 Schwartzberg --

21 MR. SCHWARTZBERG: Thank you.

22 Your Honor, once again Paul Schwartzberg of the
23 U.S. Trustee's Office. We just had one concern with the
24 Prime Clerk retention. The underlying engagement letter had
25 a limitation on liability. In fact, even if Prime Clerk is

1 grossly negligent and acts with a willful misconduct, their
2 liability I think is limited to their fees.

3 On the Court's -- there's a protocol that the
4 claim agents have developed with the clerk's office is a
5 published order. None of them reference or permit a
6 limitation on liability. So there is talk about
7 indemnification which they have and we do not object to.
8 But we believe the limitation on liability should be
9 stricken from the engagement letter.

10 THE COURT: Okay. I agree with that.

11 MR. ROBERTSON: Okay. Thank you, Your Honor.

12 THE COURT: Rather than amending the engagement
13 letter, you can just put that in the (b) paragraph.

14 (Pause)

15 THE COURT: I thought I had it here. It will be
16 in the paragraph with the indemnification and the --

17 MR. ROBERTSON: Paragraph 10.

18 THE COURT: Paragraph 10. Fine.

19 But except for the two points that have just been
20 raised, this order tracks the standard order for engagements
21 like this which are, given the number of potential claimants
22 listed on the petition, the required retention of a claims
23 agent to relieve the clerk's office of the burden of dealing
24 with all the claims. And it's consistent with those orders.

25 So except for the reference to or the cross

1 reference to the order that I just a moment ago said I would
2 grant, and the clarification on the -- there being no cap
3 for willful misconduct, gross negligence, the agreement is
4 standard, and with those changes I'll approve it.

5 MR. ROBERTSON: Thank you, Your Honor.

6 Moving onto Agenda Item Number 10. This is at
7 Docket Number 8. This is the debtors' taxes motion. In the
8 ordinary course of business the debtors collect
9 (indiscernible) incur use taxes, entity taxes and fees, real
10 property taxes, personal property taxes, federal excise
11 taxes, regulatory and business license fees and taxes,
12 Puerto Rico taxes, a branded prescription drug fee, FDA fees
13 and certain other taxes. A non-exhaustive list of
14 governmental authorities to whom the debtors remit the taxes
15 and fees is annexed to the prepetition taxes motion at
16 Exhibit C.

17 The debtors do not believe that any of the taxes
18 and fees are past due and delinquent. The relief sought is
19 to pay them as they come due in the ordinary course. Given
20 the nature of the debtors' business, you know, payment of
21 taxes is, as it is in every business, you know, very
22 important.

23 In response to a question from the U.S. Trustee,
24 the license fees and taxes, the branded prescription drug
25 fees, the FDA fees, these are all billed to the company and

1 paid when due. On the opioid access excise tax, which is
2 discussed in the motion, the company will report to New York
3 State periodically and New York State will calculate the
4 amount of the tax owed and then remit the amount.

5 As disclosed in the motion itself, if you would
6 allow me, we -- we're very clear that these -- we are clear
7 that these -- the debtors are not seeking to -- sorry. The
8 debtors are not seeking to pay taxes and fees that are past
9 due. Paragraph 20, dealing with the regulatory and business
10 license fees, the debtors -- as I said, they're not aware of
11 any taxes that have not yet been remitted to the relevant
12 governmental authorities.

13 In paragraph 23, we note that there are no branded
14 prescription drug fees. Excuse me. We note that we are
15 seeking authority to pay branded prescription drug fees as
16 they come due on or after the petition date. Likewise, for
17 the FDA fees in paragraph 24.

18 Mr. Schwartzberg or Brian, I don't know if that --

19 MR. MASUMOTO: Your Honor, Brian Masumoto for the
20 Office of the United States Trustee.

21 Your Honor, as indicated by counsel, we've had
22 some discussions. Part of our concern is that with respect
23 to trust fund taxes we don't have any objections to payments
24 of those even if they constitute prepetition taxes.

25 However, non-trust fund taxes that may be

1 attributable to the prepetition period should not be
2 elevated to an admin expense in our view.

3 My understanding, the order does provide for a
4 non-acceleration provision, so I'm not sure if any payments
5 will be due between now and the final. But to the extent
6 non-trust fund taxes are attributable to a prepetition
7 period, at least until we get clarification we have some
8 concerns about allowing those payments to be made as admin
9 -- administrative expenses and elevating their priority.

10 MR. ROBERTSON: And as I said, Your Honor, there's
11 a schedule on page 5 of the motion, you know, of amounts
12 seeking to be paid in the interim and final -- in the
13 interim period and on a final basis. You know, certainly,
14 the debtors have every intention to continue to satisfy
15 their tax obligations.

16 THE COURT: On the record before me it looks as if
17 the amounts, if any, that come due between now and say mid-
18 October that might have a portion in the prepetition period
19 would be minimal and would be a priority claim, not an admin
20 claim.

21 I don't -- to me it's beneficial to pay the least
22 minimal amount to avoid accrual of interest and get into the
23 issue as to whether they're -- they give rise to liens
24 and/or trust fund liability, particularly given the fact
25 that there's no funded debt here.

1 MR. MASUMOTO: Well, again, we'll defer to Your
2 Honor. Again, our -- once again, our position is that even
3 priority taxes should not be elevated, certainly not on the
4 interim.

5 MR. HUEBNER: Your Honor, let me just help for a
6 second. You know, the thing that also matters to us a lot
7 is the administrative costs of actually fighting and not
8 paying these things.

9 THE COURT: Well, that --

10 MR. HUEBNER: It's not just interest.

11 THE COURT: -- that's what I was trying to get to.

12 MR. HUEBNER: The amounts are so small and these
13 are all things that were very recently incurred, that to say
14 start incurring the wrath of governmental regulators who,
15 among other things, grant you your license to sell your
16 product and say, ha ha, it's a priority claim and go file
17 it, we're not paying it, that just makes no sense here, Your
18 Honor. This is an extraordinarily heavily regulated
19 business. These amounts are extremely modest. The company
20 worked hard to make sure that we were basically current on
21 them. And we actually would request authority to pay all of
22 them as set forth in the motion, and we believe fully
23 supported by the declaration.

24 THE COURT: Okay.

25 MR. TROOP: Your Honor, if I may.

1 THE COURT: Okay.

2 MR. TROOP: Your Honor, Anthony Troop from
3 Pillsbury Winthrop Shaw Pittman. I'm here today on behalf
4 of the Attorney General for the State of New York, but also
5 for an ad hoc committee in formation of other states --

6 THE COURT: Okay.

7 MR. TROOP: -- which would be the states who have
8 not expressed their support for the deal.

9 MR. HUEBNER: Your Honor, we want to pay their
10 taxes, too. I want to be clear.

11 (Laughter)

12 MR. HUEBNER: We're not discriminating based on
13 who supports our deal. If we owe Massachusetts taxes,
14 please let us pay them.

15 (Laughter)

16 MR. TROOP: And, Your Honor, I'm not here to make
17 sure -- I'm not here to say don't pay them.

18 (Laughter)

19 MR. TROOP: What I am saying is that because you
20 haven't paid them, there may be an issue with regard to the
21 applicable look back periods on a variety of potential
22 claims that the estate might have to recover what might have
23 been improper payments as the case law is developing with
24 regard to standing or look back periods or, for example,
25 fraudulent conveyance claims.

1 And so my concern, Your Honor, having not thought
2 about the issue or argued about the issue or really put it
3 in this context till I heard it, is that paying the claim
4 shouldn't deprive the estate of a look back period that
5 might otherwise have been applicable on the filing date
6 because there was an amount outstanding.

7 And so I'm left with the following conundrum, Your
8 Honor, because I -- we got these papers late on Sunday. We
9 didn't have an opportunity to parse these issues or to
10 parse statute of limitations, is whether inadvertently --
11 and I do emphasize inadvertently because I ascribe no ill
12 will to anyone --

13 THE COURT: Well, how -- what is -- do we know
14 what New York State's look back period is for --

15 MR. TROOP: It's --

16 THE COURT: -- taxes? Is it ten years?

17 MR. TROOP: For taxes? I don't know what it is
18 for taxes, Your Honor. I have never had to look back for
19 taxes.

20 THE COURT: Well, I mean, you could solve that by
21 saying you could pay all but a de minimus amount.

22 MR. TROOP: Thank you, Your Honor. I just want
23 to make sure we don't inadvertently mess something up.

24 THE COURT: Okay. All right.

25 MR. TROOP: Thank you.

1 THE COURT: But, again, it appears to me given the
2 record before me that if there is any amount that is either
3 unpaid or would be coming due in the roughly two weeks
4 before our final hearing, the failure to pay that amount
5 would create a greater liability and greater expense to the
6 debtors and, therefore, their creditors than the amount that
7 would be paid, but for the point that was just raised that
8 would argue for granting interim relief here.

9 I think the debtors in -- if there is any such
10 payment that they actually find out that they should be
11 making should simply be mindful of the statute of
12 limitations issue. And what I'm authorizing here is just
13 that, authorization. It's not a direction. So I'm assuming
14 if they're mindful of that issue, they will manage it by not
15 making the payment or making all but a portion of the
16 payment.

17 MR. ROBERTSON: Thank you, Your Honor.

18 THE COURT: But there's a net benefit here to the
19 estate, even after taking into account the priority scheme
20 of the Bankruptcy Code. So I would therefore grant the
21 motion on an interim basis.

22 MR. ROBERTSON: Thank you, Your Honor.

23 THE COURT: Can I just say it's been raised. The
24 idea of having two ad hoc committees, one supporting and one
25 not supporting, is a little odd to me. I would urge the

1 parties to at least consider whether they could actually
2 work together with perhaps subcommittees when they disagree
3 with each other. I'm assuming attorney generals do talk to
4 each other, even if they're from different parties. And
5 that might avoid the necessity of having, you know, a more
6 cumbersome structure.

7 MR. ECKSTEIN: Good morning, Your Honor. Kenneth
8 Eckstein of Kramer Levin. I thought this might be an
9 opportune time to rise and present myself to the Court. And
10 I'm pleased to be here today with my co-counsel Melanie
11 Cyganowski of the Otterbourg firm, David Molton, Brown
12 Rudnick, and Craig Lithland (ph) of the Gilbert's firm. And
13 we are representing the ad hoc committee that was formed
14 consisting of the entities that Mr. Huebner described.

15 There were nine state's attorney general, the PEC,
16 the plaintiffs' executive committee, and the MDL, and
17 certain municipalities, specifically the County of Santa
18 Anna -- Santa Clara and the City of Philadelphia, all of
19 whom have indicated their support for the conceptual
20 framework for a settlement with the debtors and the Sackler
21 families that was outline by the company in Mr. Huebner's
22 remarks and their papers.

23 The ad hoc committee, Your Honor, is
24 representative of state's attorney's general for 24 states
25 and five territories, and substantial other municipalities

1 and tribes who have likewise indicated their support for the
2 conceptual settlement framework.

3 I just outline that, Your Honor, so Your Honor has
4 a perspective of the breadth of the entities. And I believe
5 that Ms. Cyganowski and Mr. Molton will probably make brief
6 remarks as well just to give Your Honor a little more
7 perspective.

8 Your Honor, I think that a great deal has been
9 accomplished to create a framework today and to organize a
10 group that can interact with the debtor on trying to move
11 this case forward in a constructive fashion. This case is,
12 at this point, only at a very preliminary stage and there's
13 a great deal of work that will need to be done. And we will
14 certainly be mindful of Your Honor's suggestion in terms of
15 thinking how we should operate.

16 But I want Your Honor to appreciate the complexity
17 surrounding what it took to get to this point and what it's
18 going to take to get to a resolution. And I completely
19 subscribe to Your Honor's sentiment that, ultimately, in
20 order to achieve a consensual plan, all parties in this case
21 -- and that is going to be a wide, wide range of
22 governmental entities and other interested parties are going
23 to have to find a way to ultimately achieve a consensus that
24 will allow us to get to a confirmed plan.

25 But in the first instance, we have to find out

1 whether or not we can create a workable structure that will
2 be the framework for a plan and we're only at the very early
3 stages.

4 THE COURT: Okay.

5 MR. ECKSTEIN: Your Honor, the only other thing
6 I'll say today is we appreciate that today's a first day
7 hearing and we appreciate that relief is limited to what is
8 necessary for operations. And we have also had only a very
9 brief amount of time to see the papers and to interact with
10 the debtor. And we appreciate that the U.S. Trustee has
11 made a variety of comments, most of which we subscribe to.

12 I will have a few comments about some of the other
13 motions, but as a general matter, given the fact that the
14 relief is interim and given the fact that the debtor has
15 already agreed to make certain modifications as will be
16 referred to with some subsequent motions, as a general
17 matter we are reserving our rights to do more diligence over
18 the next several weeks. And we would reserve our rights to
19 come back obviously and take substantive positions on these
20 motions. But we think as a general matter it makes sense
21 for the debtor to continue to operate in the ordinary course
22 of business based upon the types of relief that are being
23 sought.

24 So with respect to this particular motion, Your
25 Honor, we don't have an objection based upon the fact that

1 it's interim. But I thought this would be a good
2 opportunity to at least introduce ourselves. And I
3 appreciate the time, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
6 for the U.S. Trustee's Office.

7 While we're dealing with the ad hoc committees, I
8 just wanted to go on the record. Right now I know we're
9 going to meet with the one that exists, but I don't want our
10 silence -- in terms of the payment of these ad hoc
11 committees the U.S. Trustee has a position on it and we're
12 going to talk to the committees with them. But I don't want
13 our silence saying -- being mistaken for our agreeing to
14 anything that gets agreed to that we believe is beyond what
15 the code permits.

16 THE COURT: Okay.

17 MR. HUEBNER: Yeah. And, Your Honor, just to be
18 very clear so that there's no mistake at all, we reserve the
19 same rights. In other words, part of the deal that we put
20 forth a while ago was actually our suggestion because we
21 needed a group of experienced, you know, sort of synthesize
22 down counterparties to negotiate with is that when we reach
23 a settlement framework, because we respect the U.S.
24 Trustee's position and didn't want to fight unofficial
25 committees, that the supporting parties would have to

1 actually form a smaller group because we have a lot of very
2 complex documents to be done.

3 The fact that there -- the people who are opposing
4 the deal have chosen to organize and speak in a more focused
5 way hopefully will ultimately be helpful. The debtors
6 certainly have never offered and their clients didn't even
7 know about it until they heard it in open court, I think,
8 today. And so I don't want anyone to think that we have
9 agreed to pay the fees of the objectors. We certainly have
10 not.

11 Whether ultimately it makes sense to have a larger
12 synthetic, non-U.S. Trustee appointed governmental
13 plaintiffs' committee we'll leave to another day. But I
14 just -- people use the word ad hoc, and sometimes that
15 implies that that's already an agreement that's been made
16 with the company. That is definitely not the case here.

17 We are agreeing sort of conceptually, frankly,
18 like RSA counterparties, you know, when you reach a deal
19 with a critical mass and they are advancing with you, here
20 we have the edit overlay that they just -- the trustee won't
21 let them on the official committee. So in order for the
22 vast majority of our claimants, which I think 85.8 percent
23 of the filed lawsuits are governmental, we believe it's
24 appropriate to give the real parties of interest a voice.

25 But none of this is for today. Let me just be

1 super clear. I know it's obvious to the Court, but for
2 everybody. We will file a motion at the appropriate
3 juncture with appropriate argument and factual support when
4 we are ready to move forward seeking to use estate property,
5 to pay the fees of X, and people should talk before then and
6 they've heard the Court's view that maybe one bigger tent
7 makes sense. It may make sense. It's hard to say. There
8 are a lot of people with very different views.

9 But I didn't want the use of the word -- actually,
10 there are two, Your Honor, to have anybody imply from that
11 that the debtors have agreed to pay for a UCC and a
12 supporting governmental entities' committee and an opposing
13 governmental committee. That would make it go on in a way
14 that I don't think we're going to sign onto.

15 THE COURT: Okay.

16 MR. SCHWARTZBERG: Your Honor, I'm sure -- it's
17 not for today, but I'm sure Your Honor clearly understands
18 the U.S. Trustee's position on the committee. Persons is a
19 defined word under the code. And it does not include
20 governmental entities, and that's -- we believe our position
21 is following through in what congress enacted when they
22 enacted the Bankruptcy Code.

23 THE COURT: Okay.

24 MR. MACLAY: Your Honor, may I be heard?

25 THE COURT: Sure.

1 MR. MACLAY: My name is Kevin Maclay, Your Honor.
2 I'm from Caplin & Drysdale, along with my colleagues, Todd
3 Phillips and Jim Wehner. I just wanted to announce to the
4 Court that we represent a group of approximately 400
5 governmental entities. We call it the multi-state group,
6 Your Honor. And that isn't in the objector can or right now
7 in the support can. We're in a can of trying to figure out
8 what's going on and hopefully working with the debtors in
9 the current other ad hoc to figure out the best step
10 forward.

11 But I just wanted to make sure that our existence
12 was known, Your Honor, as we move forward hopefully
13 consensually.

14 THE COURT: Okay. That's fine.

15 I mean, but my remark just went to one simple
16 point, which is that it is probably a good thing for various
17 groups of parties in interest in these cases to act through
18 common representatives just as official committees may have
19 members that at times disagree with each other. It's quite
20 possible that, although they generally act through common
21 entities they may have a disagreement. And maybe those
22 disagreements will be so fundamental that they can't all
23 work together through a common representative.

24 But it would seem to me that there are certain
25 functions that common representatives would perform that

1 would be standard, such as coordinating due diligence,
2 coordinating discovery and the like that might warrant these
3 groups to see if they can organize a common way to deal with
4 those issues even if they decide that they want to have a
5 separate group.

6 But all sorts of -- all other issues, including
7 rights to compensation and the like are clearly not what I'm
8 addressing here.

9 MR. ROBERTSON: Thank you, Your Honor. This is,
10 again, Christopher Robertson on behalf of the debtors,
11 turning back to the first day agenda.

12 THE COURT: Right.

13 MR. ROBERTSON: Moving on to Agenda Item Number
14 10, that's also Docket Number 10. This is the debtors'
15 insurance motion.

16 The debtors require various liability, casualty,
17 property and other insurance programs. If any of these
18 programs or policies lapse without renewal, the debtors
19 could be in violation of state and/or federal law resulting
20 in loss of licenses and then loss of ability to operate
21 their businesses.

22 Certain governmental agencies also require the
23 debtors to maintain certain insurance policies.

24 The debtors believe that all material insurance
25 premiums or amounts due under the insurance policies that

1 were due and payable prior to the petition date have been
2 fully paid.

3 We have received no formal or informal objections
4 to this motion. Unless Your Honor has any questions, we
5 respectfully request that the motion be approved.

6 THE COURT: Okay. Does anyone have anything to
7 say on the insurance motion?

8 I will grant the motion on an interim basis. The
9 legal issue is to the nature of an insurance policy and
10 whether an insurer for non-payment of premium is violating
11 the stay. And terminating a policy is a nice legal issue.
12 But in the context of these cases and based on the record
13 before me which shows that the debtors believe they're
14 current with all these policies, this does not appear to me
15 to be the place to press that issue.

16 So I will grant the motion on an interim basis.

17 MR. ROBERTSON: Thank you, Your Honor.

18 Turning to Agenda Item Number 11. That's at
19 Docket Number 13. This is the schedules and SOFAs
20 extension. Pursuant to Rule 1007 and Section 521 of the
21 Bankruptcy Code, the debtors are required to file their
22 schedules and SOFAs within 14 days after the petition date.

23 Given the size and complexity of these cases, we
24 believe that an additional 30-day extension is appropriate.
25 The debtors and their professionals intend to work

1 diligently to have the schedules and SOFAs filed before the
2 expiration of what would be a 44-day period should Your
3 Honor grant that relief.

4 This motion is unopposed. Unless Your Honor has
5 any questions, we would respectfully request it be entered.

6 THE COURT: Okay. Does anyone have anything to
7 say on this motion?

8 All right. Given the size of the debtors and
9 their creditor body, and the other legal work the debtors
10 have been doing leading up to these filings, a 30-day
11 extension is certainly warranted. So I'll grant that
12 relief.

13 MR. ROBERTSON: Thank you, Your Honor.

14 I would now like to turn the podium over to my
15 colleague, Dylan Consola to present the surety motion.

16 THE COURT: Okay.

17 MR. CONSLA: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. CONSLA: For your record -- for the record
20 Dylan Consola of Davis Polk & Wardwell on behalf of the
21 debtors. The next motion on the agenda is the surety bonds
22 motion, which is Agenda Item Number 12 and also Docket Item
23 Number 12.

24 By this motion, the debtors seek authority to
25 maintain, continue and renew their surety bond program in

1 accordance with the same practice and procedures as were in
2 effect prior to the petition date.

3 This relief is necessary because various state and
4 local governmental authorities require the debtors to post
5 surety bonds to operate their business in the ordinary
6 course, including to maintain licenses to sell or distribute
7 pharmaceutical products. So this is necessary to operate
8 the business as they have been doing. Failure to provide,
9 maintain, replace these surety bonds could jeopardize their
10 ability to continue to operate.

11 There have been no objections or changes to the
12 proposed form of order. So unless Your Honor has any
13 questions, we would ask that the relief be granted.

14 THE COURT: Okay. Does anyone have anything to
15 say on this motion?

16 MS. LEONARD: Yes, Your Honor. Nicole Leonard of
17 McElroy Deutsch Mulvaney and Carpenter on behalf of
18 Westchester Fire Insurance Company.

19 THE COURT: All right.

20 MS. LEONARD: We just want to clarify that
21 Westchester has no obligation to issue any new bonds or
22 modify any existing bonds. And we would like that added to
23 the order.

24 THE COURT: Well, I don't know if that's true. I
25 mean, I don't know what the agreement is between your client

1 and the debtors.

2 MS. LEONARD: Well, we -- our position is we have no
3 obligation --

4 THE COURT: Well, I know that's your position.
5 But if you're asking me to enter an order that actually
6 declares that position is correct, I'm not going to do it.
7 I mean, obviously -- there's nothing in the order that
8 forces someone to do anything beyond their contractual
9 obligations as modified by the Bankruptcy Code.

10 MS. LEONARD: Well, then we would like to reserve
11 all our rights for the final --

12 THE COURT: That's -- okay.

13 MS. LEONARD: -- and we --

14 THE COURT: I mean, I -- as you probably know, I'm
15 not a big fan of people standing up and saying they reserve
16 their rights because basically all rights are reserved
17 unless they're specifically dealt with in an order. And if
18 I let one person stand up, then everyone thinks they have to
19 stand up to reserve their rights.

20 So I'm just going to say this once. The order is
21 limited to what it says.

22 MS. LEONARD: Okay.

23 THE COURT: And I don't view this as determining
24 any rights under surety bonds.

25 MR. HUEBNER: Your Honor, for the avoidance of

1 doubt, this is an entirely standard order that just
2 authorizes --

3 THE COURT: No. I know. I read it.

4 MR. HUEBNER: If any party really believes that
5 somewhere there's magic language that we missed that is an
6 affirmative injunction that compels them to do things,
7 they're welcome to call us and point out that we made a
8 mistake in a very standard order.

9 THE COURT: Okay.

10 MR. HUEBNER: If they --

11 THE COURT: But, again, the --

12 MR. HUEBNER: -- didn't, then we're done.

13 THE COURT: I think I was careful to say people's
14 rights are limited by their contracts --

15 MR. HUEBNER: Exactly.

16 THE COURT: -- as modified by the Bankruptcy
17 Code. The automatic stay applies in the Bankruptcy Code
18 automatically.

19 MR. HUEBNER: Exactly. It's a motion to grant --
20 giving us authority, not enjoining other parties to act in
21 any way that they don't have to do. And of course we
22 understand that.

23 THE COURT: Right. But, again, the order doesn't
24 adjoin people, but the automatic stay --

25 MR. HUEBNER: Correct.

1 THE COURT: -- may depending on the issue.

2 So I'm going to grant the relief as sought.

3 MS. LEONARD: Thank you, Your Honor.

4 MR. ROBERTSON: And essentially for the same
5 reasons that I granted the relief with respect to the
6 insurance programs.

7 MR. CONSLA: Thank you, Your Honor.

8 The next item on the agenda is the utilities
9 motion --

10 THE COURT: Right.

11 MR. CONSLA: -- which is Agenda Item Number 13 and
12 Docket Entry Number 7.

13 By this motion, the debtors propose to provide the
14 utility providers with an adequate assurance deposit that's
15 estimate to total approximately \$350,611. This is equal to
16 two weeks' worth of utility services calculated on a
17 weighted average over the 12 months ending June 30th, 2019,
18 which is the customary amount and calculation methodology.

19 The debtors seek a determination that the adequate
20 assurance deposit will provide utility companies with
21 adequate assurance of payment under the meaning of 366, and
22 an order prohibiting the utility providers from altering,
23 refusing or discontinuing services on account of prepetition
24 amounts outstanding or the perceived inadequacy of such
25 deposit.

1 The debtors are also seeking approval of customary
2 procedures for resolving requests from insured -- from
3 utility providers for additional amounts or resolving other
4 disputes before having to bring them to Your Honor.

5 We have received no objections. There are no
6 changes to the proposed form of order here as well. So we
7 would respectfully ask that this order be granted as well.

8 THE COURT: Okay. I think, again, as with the
9 case management order, I appreciate that you have generally
10 tracked what I've entered in the past and that the order is
11 largely consistent with the applicable law, including in
12 this jurisdiction as well laid out in Judge Seibel's A&P
13 opinion.

14 But there are a couple of changes that I believe
15 you should make --

16 MR. CONSLA: Okay.

17 THE COURT: -- to better track that opinion
18 dealing with how the money actually goes out, if there's a
19 default and how it comes back, if there's a cure and the
20 like, as well as with disputes.

21 So I'm going to give you that mark up and it
22 references an order that I entered recently that has the
23 paragraphs that I would like you to add.

24 MR. CONSLA: Should I approach, Your Honor?

25 THE COURT: Sure.

1 And, again, this is an interim order. You'll be
2 giving notice to the utilities so they can raise an issue if
3 they want, although for the last several cases they haven't
4 done that. So I'm assuming they're going to be happy with
5 this, or at least content to live by it.

6 MR. CONSLA: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. CONSLA: With that I will turn the podium over
9 to my colleague, Eli Vonnegut.

10 THE COURT: Okay.

11 MR. VONNEGUT: Good morning, Your Honor. For the
12 record my name is Eli Vonnegut of Davis Polk & Wardwell, LLP
13 on behalf of the debtors.

14 Your Honor, first I will be presenting our
15 customer programs motion which is Agenda Item Number 14,
16 Docket Number 11.

17 Your Honor, by this motion we are seeking
18 authority to continue performing under the debtors' existing
19 customer programs to honor prepetition obligations owed to
20 customers and to otherwise continue to manage the customer
21 programs and practices in the ordinary course of business.

22 We also seek relief from the automatic stay to
23 permit setoffs in connection with the customer programs,
24 authority to satisfy any outstanding obligations under our
25 agreements with third party vendors that help us manage our

1 customer programs. And we ask that the Court authorize all
2 applicable banks and other financial institutions to process
3 related checks and transfers.

4 Your Honor, I'll cover the programs themselves
5 very briefly because they are described exhaustively in the
6 motion.

7 The vast bulk of the debtors' sales, 90 percent as
8 of August 31 of 2019, are to wholesalers, principally three
9 of them: McKesson, AmerisourceBergen and Cardinal. Those
10 sales, however, are really just the first step in the flow
11 of the debtors' products through the market, which in
12 aggregate involves a series of chargebacks, discounts,
13 rebates and other adjustments to those initial prices based
14 on who the ultimate buyers of the product are. And those
15 together create a dynamic fluctuating set of accounts
16 payable and receivable that together add up to the debtors'
17 real bottom line.

18 Our motion to hopefully aid in explaining how
19 these programs work attached a diagram at Exhibit C that
20 lays out the flow of the debtors' products through the
21 market, separately for the Purdue debtors who sell branded
22 prescription products, the Rhodes' debtors who sell generic
23 prescription products, and the Averio (ph) entities that
24 sell consumer health products. So that's annexed to the
25 customer programs' motion at Exhibit C.

1 For the debtors to continue operating their
2 businesses, they need to continue honoring these obligations
3 in the ordinary course. Its failure to do so could erode
4 goodwill, incur fines, penalties and exclusion from
5 important programs and cause irreparable damage to the
6 debtors' relationships with their customers.

7 Stated simply, failure to honor any of our
8 obligations under the customer programs would result in the
9 loss of the revenue associated with the relevant end
10 customer which would harm all stakeholders.

11 Your Honor, as these programs are described
12 exhaustively in the motion, unless you had any questions I
13 wouldn't propose to describe them in detail.

14 THE COURT: Well, my question on this -- and maybe
15 it's more appropriate for Mr. Lowne, but is -- well, I have
16 two, actually.

17 The first is have these programs changed over the
18 last couple of years as the debtors' business has changed.
19 I mean, are -- and the second question is related to the
20 first, which is are they still working? The premise behind
21 this and the next few motions is all centered on the fact
22 that the debtor has agreed to -- or the debtors have agreed
23 to turn over the value in the debtors to their creditors
24 pursuant to a process that, as Mr. Eckstein said, will take
25 a fair amount of work to figure out.

1 So the premise here is you want to preserve that
2 value.

3 MR. VONNEGUT: Correct, Your Honor.

4 THE COURT: Are these programs being still run in
5 a way that preserves that value or have they been effected
6 by the debtors' litigation and business experience over the
7 last at least couple of years in a way that actually may at
8 this point be reducing value?

9 MR. VONNEGUT: Sure, Your Honor.

10 So the short answer to your question is yes, the
11 customer programs are continuing to work. The business is
12 still operating actively and has maintained good and
13 productive and profitable relationships with its -- both its
14 wholesaler customers and with end users.

15 I would not, however, tell you that the pending
16 litigation has not impacted the business.

17 THE COURT: So that's a separate question. What I
18 --

19 MR. VONNEGUT: Sure.

20 THE COURT: -- I'm really getting at, particularly
21 since many of these end users are also regulated and/or
22 governmentally tied, are -- am I authorizing here the
23 debtors to walk into some sort of extra penalty or, you
24 know, not in a legal sense, but tax or some sort of
25 imposition that people shouldn't be imposing on the debtors?

1 MR. VONNEGUT: No, Your Honor. I don't think you
2 are. This is simply authorizing continued operation of the
3 business the way that it has been operated in the ordinary
4 course in the past. And while there are, of course,
5 adjustments from time to time based on evolving
6 relationships with counterparties, the core function of the
7 business remains unchanged. And we're not proposing to
8 change it under any of these programs.

9 THE COURT: Okay. All right.

10 Does anyone have anything to say on this motion?

11 MR. VONNEGUT: Oh, I'm sorry, Your Honor. I
12 should have said we've received no objections. We're not
13 aware of any questions or concerns.

14 THE COURT: All right. Okay.

15 MR. ECKSTEIN: Your Honor, Kenneth Eckstein of
16 Kramer Levin on behalf of the ad hoc committee. I just rise
17 to note this is obviously involving very, very material sums
18 of money, \$344 million of proposed --

19 THE COURT: Right.

20 MR. ECKSTEIN: -- rebates and discounts.

21 THE COURT: Right.

22 MR. ECKSTEIN: At this point, we don't object to
23 the relief, but I think it's appropriate at this juncture to
24 note this is an example of a motion that we do intend to
25 review and reserve our rights to come back. And if there

1 are any appropriate modifications and limitations, we'll
2 deal with that at the final hearing.

3 THE COURT: Right. I understand. And other
4 people don't need to -- I mean, everyone will have a chance
5 to review it, obviously.

6 And to be clear, this seeks relief to continue or
7 authority to continue these various programs in the ordinary
8 course. So --

9 MR. VONNEGUT: Correct.

10 THE COURT: -- if some entity starts acting out of
11 the ordinary course, then you can tell them that we don't
12 have authority to pay you on that basis or let you offset on
13 that basis.

14 MR. VONNEGUT: Thank you, Your Honor. And just to
15 --

16 THE COURT: All right. So --

17 MR. VONNEGUT: -- address Mr. Eckstein's concerns
18 and any similar concerns that anyone may have, this is, of
19 course, a very complex business. We stand ready. We want
20 to help everybody understand it and address any questions
21 that anybody has. So if there are questions about the
22 customer programs or anything else, please just reach out to
23 us.

24 THE COURT: Okay. All right. So based on the
25 record before me I'll grant this relief on an interim basis.

1 It's clear to me that these programs are significant and
2 complicated. It's not your normal green stamps at the
3 supermarket. But it also is clear to me that disrupting
4 them at this juncture in the case would be truly detrimental
5 to the debtors' business. And that the debtors should have
6 the authority to continue to perform under them pending a
7 final hearing, and the due diligence that I'm sure parties
8 of interest will be taking.

9 MR. VONNEGUT: Thank you, Your Honor.

10 Oh, and I apologize. I should have mentioned at
11 the outset. We do have one small adjustment to the order
12 that was requested by two wholesalers, McKesson and
13 AmerisourceBergen that is simply a recitation that we intend
14 to continue performing under our customer programs with them
15 in the ordinary course of business.

16 And my colleague has the marked order. If I may
17 approach the bench, Your Honor?

18 THE COURT: I'm not sure what that means, continue
19 --

20 MR. VONNEGUT: It's -- frankly, Your Honor, I
21 think it just said what we said we were intending to do.
22 We're happy to add it to accommodate the concerns of these
23 wholesalers --

24 THE COURT: Well, I'm a little --

25 MR. VONNEGUT: -- or not, as you prefer.

1 THE COURT: I don't know the relationships that
2 you have with them.

3 MR. VONNEGUT: Sure.

4 THE COURT: If they are just a supplier -- if they
5 are just a customer or if they might be a supplier, too. I
6 mean, partly I'm motivated by the fact that yesterday I
7 denied a summary judgment motion by McKesson --

8 (Laughter)

9 THE COURT: -- saying that they should be relieved
10 of all preference claims in the A&P case. You know, there
11 they were clearly a customer --

12 MR. MOLTON: Your Honor, David Molton --

13 THE COURT: -- and supplier, too.

14 MR. MOLTON: Oh, I'm sorry.

15 THE COURT: So I just don't know what it means
16 when you say that you'll just continue all relationships in
17 the ordinary course. I mean, effectively --

18 MR. VONNEGUT: Would you like me to present the
19 language to Your Honor or read it?

20 THE COURT: Well, you can hand it up. But I don't
21 know what the relationships are, so --

22 MR. VONNEGUT: I understand, Your Honor. If I may
23 approach?

24 THE COURT: I mean, it's one thing -- anyway, I
25 think you understand what I'm saying.

1 MR. GARFINKLE: Your Honor, this is Jeff Garfinkle
2 for McKesson. May I be heard?

3 THE COURT: Well, let me just read this language
4 first.

5 MR. GARFINKLE: Okay. Thank you.

6 (Pause)

7 THE COURT: Well, so this is actually set off
8 language, right?

9 MR. VONNEGUT: Correct. Correct, Your Honor.
10 That is a component of the customer programs. The way that
11 a number of these work is that charge back and rebate claims
12 that the wholesalers have are set off against other payments
13 that would be made to the debtors. It's -- most of these
14 amounts are not paid in cash.

15 THE COURT: Well, I think the difference is that
16 this order before this language authorized the debtors to
17 set off.

18 MR. VONNEGUT: Correct.

19 THE COURT: The new language would authorize the
20 wholesalers to set off. And I'm just -- I'm not prepared to
21 do that on an interim basis. I mean, you know, there's no
22 stay motion. If they have a recoupment right, they can do
23 it. But a set off right is more complicated.

24 I mean, for -- I mean, I just --

25 MR. VONNEGUT: Understood, Your Honor. I believe

1 Mr. Garfinkle --

2 THE COURT: I mean, yesterday we litigated for
3 about -- well, we argued for about 45 minutes whether a
4 503(b)(9) claim is pre or post-petition for purposes of a
5 preference claim for set off purposes. So it's a
6 complicated area.

7 MR. MOLTON: Judge, just one point. David Molton,
8 Brown Rudnick, for the committee.

9 Your Honor, in explaining the context -- and I
10 think Your Honor cautioned with respect to this motion is
11 wise and the committee itself will need to take a very hard
12 look at this.

13 But Your Honor should be advised McKesson and
14 Amerisource are indeed active defendants in the national
15 opioid litigation. And so many of these issues have serious
16 impact across the board.

17 THE COURT: All right.

18 MR. MOLTON: And accordingly what Mr. Eckstein
19 said at the beginning is we're two days into this, the
20 interim relief. We acknowledge it's interim relief, but
21 we're going to have to take a very deep look at this.

22 THE COURT: Okay. Well, I mean, I -- that's -- I
23 mean, you're going to take a look at everything, but I'm
24 reluctant to grant stay relief at the beginning of the case.

25 MR. VONNEGUT: Your Honor, just one important

1 additional point to mention. The way these programs is work
2 is the setoffs, which are how these rebates and charge backs
3 are applied, practically speaking, mechanically, they are
4 actually done by the wholesalers rather than done by the
5 debtors. That's the way the programs operate.

6 THE COURT: Well, but you tell them it can be
7 done, right? You're --

8 MR. VONNEGUT: Yes, sir.

9 THE COURT: -- authorized to tell them that under
10 this order.

11 MR. VONNEGUT: Yes.

12 THE COURT: So I just -- I think there's more that
13 could be subsumed in this agree -- in this language than is
14 -- I'm comfortable with.

15 MR. VONNEGUT: Okay. And just to address a
16 concern that was raised. They are just distributors.

17 THE COURT: No. This deals with payables and I
18 understand that.

19 MR. VONNEGUT: Yeah.

20 THE COURT: But I don't -- I want to limit it to
21 how it was originally worded.

22 MR. HUEBNER: Your Honor, with great apologies.
23 Let me just jump in for a second because I do have the CFO
24 talking to me right next to me.

25 THE COURT: Right.

1 MR. HUEBNER: I think we're all clear, but the
2 company needs to know with specificity, especially with Mr.
3 Lowne sitting here listening to you. The way it works kind
4 of every day is that the wholesalers do complex calculations
5 based on rebates that end users are entitled to, and they
6 deduct from what they otherwise would pay us amounts for
7 veterans, Medicare, state programs, and send us that --

8 THE COURT: Well --

9 MR. HUEBNER: -- money.

10 THE COURT: -- the company can -- the company
11 would be authorized on an interim basis to --

12 MR. HUEBNER: Allow --

13 THE COURT: -- allow that set off, but I don't
14 want to give additional authority to set off beyond that.
15 And you may say, well, that's all that this sentence says.
16 But then you don't need the sentence.

17 MR. HUEBNER: Understood. And, again, I just --
18 because Mr. Lowne was getting not anxious because he
19 actually, in fact, never gets anxious which is kind of
20 amazing to me.

21 THE COURT: Okay.

22 MR. HUEBNER: But looking for clarification on
23 this.

24 THE COURT: All right.

25 MR. HUEBNER: But the business model, I think

1 we've now described sufficiently --

2 THE COURT: The prior sentence says the company --

3 MR. HUEBNER: -- and it does it.

4 THE COURT: -- is allowed to --

5 MR. HUEBNER: Exactly.

6 THE COURT: -- do the set off.

7 MR. HUEBNER: And he is now -- thank you, Your
8 Honor. I apologize very much for standing up.

9 MR. VONNEGUT: So, Your Honor, I do believe we
10 have counsel to one of the wholesalers on the phone. I
11 don't know if Mr. Garfinkle wanted to be heard.

12 MR. GARFINKLE: Your Honor, Jeff Garfinkle for
13 McKesson. And I appreciate yesterday being in front of the
14 Court and explaining work --

15 (Laughter)

16 MR. GARFINKLE: -- from the wholesaler to the end
17 user customer such as was existing in A&P. What we have
18 here is the top end of the relationship whereby a
19 pharmaceutical company utilizes wholesalers such as
20 McKesson, such as AmerisourceBergen, such as Cardinal
21 Health, to distribute their products.

22 It is our position, McKesson's position, in a
23 number of pharmaceutical bankruptcy cases that have filed
24 around the country over the last 20 years is that this
25 relationship is recoupment in terms of the day to day

1 netting that takes place when --

2 THE COURT: The recoupment -- can I -- let me --

3 I'm sorry to interrupt you. Recoupment is allowed.

4 Recoupment doesn't violate the stay. And if it truly is

5 recoupment, then there is no consequences. But this

6 sentence said set off. It didn't say recoupment. And the

7 prior sentence said the debtor is authorized to allow the

8 set off.

9 So I'm just -- I don't want there to be any issues

10 down the road. I think the way it was worded is clear and

11 this additional sentence, I think, to me unduly complicates

12 the issue. So there's nothing in this order that prevents

13 recoupment. Obviously, if someone makes a mistake and it's

14 not recoupment, it's a set off. That's a problem, although

15 usually and particularly under Taggart there may be a

16 perfectly legitimate way that no one gets sanctioned for it.

17 So let's just leave it at that.

18 MR. GARFINKLE: Fair enough, Your Honor.

19 THE COURT: Okay.

20 MR. VONNEGUT: Thank you, Your Honor. If there's

21 no further questions on the customer programs motion, we

22 would propose to turn to the next item on the agenda, the

23 wages motion.

24 THE COURT: All right. So you can e-mail the

25 interim order as proposed --

1 MR. VONNEGUT: Thank you, Your Honor. We'll do
2 that.

3 THE COURT: -- in the binder to chambers.

4 MR. VONNEGUT: Of course. And, Your Honor, the
5 next item on the agenda is Agenda Number 15, Docket Number
6 6, the employee wages motion.

7 Pursuant to this motion, the debtors seek
8 authority to pay prepetition wages, salaries and other
9 amounts owing to their employees and to continue existing
10 employee benefit programs in the ordinary course of
11 business.

12 Your Honor, my partner, Mr. Huebner, outlined at
13 the outset of this hearing the structure of our proposed
14 settlement and what the debtors hope to achieve in these
15 cases. The cornerstone of the settlement is the
16 contribution of the entirety of the debtors' value to a
17 trust for the benefit of the claimants in these cases who
18 are effectively the American people.

19 In order for the promise of that settlement to be
20 realized, we must preserve the stability and value of the
21 company during these cases. Purdue will be worth more to
22 its ultimate owners and creditor recoveries will be higher
23 if we are able to protect the value of the enterprise.

24 The debtors employ approximately 700 dedicated and
25 talented individuals working in both full and part-time

1 positions. The employees are the life blood of the
2 organization and are critical to the value proposition that
3 underlies our proposed settlement.

4 The work force includes a dedicated roster of
5 operational managers, sales and marketing personnel, medical
6 affairs personnel, research and development personnel, human
7 resources people, as well as a diverse group of business and
8 administrative professionals.

9 The pharmaceutical industry, as you're no doubt
10 well aware, is highly specialized and highly technical. The
11 collective knowledge and experience of these employees is
12 critical to the success of the debtors' business. If we
13 lose employees, we may not be able to replace them, and the
14 resulting harm to the value of the business would hurt all
15 of the stakeholders.

16 Your Honor, it's important to note that Purdue in
17 recent years is a hard place to work. Starting with some
18 simple statistics. In 2017 and 2018 overall company
19 headcount, exclusive of the Rhodes' business, was reduced by
20 over 1,000 employees. That's a 67 percent reduction with 856
21 of those reductions occurring in 2018.

22 From 2018 to date the company has experienced over
23 25 percent attrition among the top tier of employees.

24 The ongoing litigation has also consumed a
25 tremendous amount of critical employee time and energy.

1 Many employees have had to devote their time to preparing
2 for depositions, to being deposed, to responding to
3 litigation related requests for information, and otherwise
4 generally bearing the weight of the litigation,

5 The litigation has also caused operational
6 challenges. Multiple financial institutions have refused to
7 do business with the debtors due to concerns about the
8 litigation, and a variety of vendors, suppliers, and other
9 counterparties necessary to the continued operation of the
10 business have attempted or threatened to terminate the
11 relationships with the debtors which requires management to
12 spend substantial time securing replacement services.

13 The overall environment in which the debtors'
14 employees work is extremely challenging. They have faced an
15 unprecedented wave of negative publicity, including very
16 recently the attorney general of their home state of
17 Connecticut stating his belief that, as he put it, Purdue
18 has to go away and has to be shut down earlier this month.

19 Working for any debtor in bankruptcy is, of
20 course, challenging. It's always challenging. But having a
21 large mobilized and vocal group actively campaigning to
22 drive your employer out of existence is quite simply
23 qualitatively different. And it puts a tremendous strain on
24 Purdue's employees.

25 Throughout recent years, 2018 and 2019, this has

1 led to an escalating climate of uneasiness among Purdue
2 leaders and employees at all levels of the company. And it
3 makes employee retention extraordinarily challenging.

4 Following the recent headcount reductions which
5 included both planned reductions in force and unplanned
6 attrition, Purdue is a very, very leanly staffed
7 organization. It's critical to remain key talent including
8 executives as well as middle managers and staff with
9 specific skills and valuable knowledge.

10 Ongoing operation of the business requires
11 preservation of staff with specific skills including, but
12 not limited to, medical and scientific expertise, controlled
13 substance clinical research expertise, epidemiology risk
14 management, central nervous system research, oncology,
15 expertise in working with governmental agencies. It's a
16 very long list of important types of expertise that this
17 company needs to continue operating.

18 All of this, Your Honor, and apologies for
19 belaboring it, is to emphasize a simple point. If we are
20 going to preserve the value of the estate, the debtors need
21 to honor their commitments to their employees. The value of
22 the business relies -- resides in large part in its people
23 and the company's many stakeholders cannot afford to
24 undermine employee morale and thereby destroy that value,
25 particularly in the critical early days of the case.

1 Your Honor, the obligations are fairly simple, and
2 I'll describe them in a moment. But first I want to make
3 clear a few important things. First and most importantly,
4 no member of the Sackler family is an employee of the
5 company. No payments will be made to or for the benefit of
6 a Sackler family member, period, full stop.

7 Number two, we are not seeking authority today to
8 make any payments to insiders beyond their simple wages and
9 benefits. No bonuses, no retention, no severance for
10 insiders.

11 Third, we are not seeking authority to implement
12 any new compensation plans. The wages motion exclusively
13 covers preexisting programs. What we're trying to do in
14 these early stages of the case is simply continue operating
15 the business the way that we always have, including paying
16 people the way we've always paid people.

17 THE COURT: Other than annual setting of targets,
18 were any preexisting programs brought into existence within
19 the year before the bankruptcy?

20 MR. VONNEGUT: No, sir. The programs are long-
21 standing. Now I should mention that --

22 Excuse me, Your Honor.

23 (Pause)

24 MR. VONNEGUT: Excuse me, Your Honor. Some of the
25 retention programs were phased in over the calendar years of

1 2018 and 2019.

2 THE COURT: Okay.

3 MR. VONNEGUT: So first I want to mention a few
4 agreements that we've reached with the United States
5 Trustee's Office. And I would like to thank Mr.
6 Schwartzberg, Mr. Masumoto and Mr. Carney (ph) for their
7 help and patience working on this with us.

8 We believe that, frankly, all of the employee
9 programs outlined in the motion are important to the
10 continued driving of the business. However, based on input
11 from the United States Trustee's Office, we have agreed to
12 defer a number of those items to final hearing on this
13 matter. So those are not on for today.

14 Those items include the annual incentive plan, or
15 the AIP, the market access ICP, the long-term results plan
16 for both the Purdue debtors and the Rhodes' debtors, the
17 Treyburn retention plan, and payment of severance to former
18 employees.

19 Also, the sign on bonuses, and I think this is
20 just chronologically true, but we're making it clear in the
21 order. We're not seeking authority to pay any sign on
22 bonuses that fall due after October 31st, so that those will
23 be subject to entry of the final order.

24 And if I may approach, Your Honor, I have a
25 revised form of order with an additional paragraph that

1 we've worked out with the U.S. Trustee's Office.

2 THE COURT: Okay. Were any of the payments under
3 the five programs that you mentioned before the sign on
4 bonuses, were any of those -- well, severance I guess could
5 conceivably come in. But were any of the other four, are
6 their obligations currently owing under them?

7 MR. VONNEGUT: I'll get to that in a moment, Your
8 Honor.

9 THE COURT: Okay.

10 (Pause)

11 MR. VONNEGUT: Okay. Your Honor, unless you have
12 any questions I would propose to skip the basic benefit
13 programs that are -- that we view as kind of a component to
14 basic wages. But if you have any questions I'm happy to
15 address them.

16 THE COURT: Well, I just had that -- I just asked
17 that one question.

18 MR. VONNEGUT: Oh, no, sorry. I meant just, you
19 know, withholding obligations, expense reimbursement, that
20 category of thing.

21 THE COURT: No, I don't have questions on that.

22 MR. VONNEGUT: Great. Okay.

23 So first with respect to severance we're asking
24 for very limited relief. The existing company-wide
25 severance plan provides for six month's severance to vice

1 principals -- not vice principals, excuse me, Your Honor,
2 vice presidents with less than five years' service and one
3 year for those with more than five years' service, more
4 junior employees get either two or three weeks' severance
5 per each year of service up to a maximum of 52 weeks.

6 And the only authority that we're asking for is to
7 pay severance to any employees who are terminated post-
8 petition, excluding insiders.

9 THE COURT: Okay. Which would be consistent with
10 Strauss DuParkay (ph).

11 MR. VONNEGUT: Correct, Your Honor, that's --
12 those would be administrative claims, that's the only
13 authority we're asking for.

14 THE COURT: Okay.

15 MR. VONNEGUT: Okay. The annual incentive plan as
16 I noted, that's being deferred. That leaves the non-
17 executives --

18 THE COURT: And I'm sorry, that plan -- it wasn't
19 clear to me whether anything was going to come due in any --
20 under that plan over the next two or three weeks.

21 MR. VONNEGUT: That's correct, it would not, Your
22 Honor, and that's why we're comfortable deferring it.

23 THE COURT: So your employees should realize that
24 you put off a fight that may never happen.

25 MR. VONNEGUT: Absolutely, Your Honor, and that's

1 our intention.

2 THE COURT: Okay.

3 MR. VONNEGUT: Okay. So that takes me to the
4 several components, the non-executive retention plan,
5 advancement of legal fees and sign-on bonuses.

6 Now with respect to these, we have had extensive
7 discussions with the U.S. Trustee's Office. I don't believe
8 that our disagreements are fully resolved. So if it's
9 acceptable to Your Honor, I'd propose to proffer some
10 additional testimony of our first day declarant who is the
11 senior vice-president and chief financial officer of PPLP
12 Jon Lowne in support of these programs.

13 THE COURT: I thought you agreed on this sign on
14 bonus language?

15 MR. SCHWARTZBERG: No, Your Honor, we actually
16 have a --

17 THE COURT: Beyond what's in the order. There's
18 an issue beyond what's in the proposed order on the sign on
19 bonuses?

20 MR. MASAMUTO: There's some sign-on bonuses that
21 they're seeking to --

22 THE COURT: Right.

23 MR. MASAMUTO: I believe there are five
24 individuals.

25 THE COURT: Okay.

1 MR. VONNEGUT: Correct, Your Honor.

2 THE COURT: Okay. All right. So you're going to
3 proffer Mr. Lowne's testimony?

4 MR. VONNEGUT: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. VONNEGUT: So as mentioned earlier, Mr. Lowne
7 is in the courtroom. If called upon to testify Mr. Lowne
8 would testify as follows.

9 With respect to the non-executive retention plan,
10 Mr. Lowne is familiar with the non-executive employee
11 retention plan. The purpose of that plan is to provide cash
12 based incentive awards to certain critical employees each
13 quarter in order to retain those employees.

14 This is a difficult time for Purdue and it would
15 be very difficult to attract new talent were the company to
16 lose its current employees. With all the negative
17 publicity, many employees are concerned about the economic
18 risks that they are taking by staying at Purdue.

19 Further, Mr. Lowne would testify that these
20 employees are highly skilled and would have no trouble
21 finding new role at another company. These employees have
22 highly coveted skills in the industry and the company is not
23 an easy place to work right now. It would cause immediate
24 and irreparable harm to the company if these persons were to
25 leave.

1 Mr. Lowne would testify that he was involved in
2 the process of deciding which employees were critical for
3 Purdue so as to make those employees a part of the non-
4 executive retention plan.

5 Mr. Lowne would testify that they then evaluated
6 the nature of the jobs held and the functions of each role
7 in determining both criticality of the relevant persons and
8 their insider status.

9 Mr. Lowne would testify that in evaluating
10 critical -- criticality, the debtors first identified all
11 insiders and excluded them from consideration.

12 Mr. Lowne would testify that he understands that
13 term insider to encompass and we have been -- they evaluated
14 persons for inclusion on the non-employee retention plan on
15 the basis that the term covers those responsible for the
16 strategic decision-making at Purdue, such as for example,
17 financial strategy or development strategy.

18 Mr. Lowne would testify that he is familiar with
19 the person scheduled to receive payments from the non-
20 executive retention plan in the next 45 days, those that
21 would fall due prior to our second day hearing, and that
22 none of those persons are insiders, none set policy at
23 Purdue, none have authority to make strategic decisions for
24 Purdue, none exercise any control over the company, none
25 were elected, or appointed by the Board of Directors, and

1 none of those persons report directly to the Board of
2 Directors.

3 With respect to the sign on bonus program, Mr.
4 Lowne would testify that he is familiar with the sign on
5 bonus program, that Purdue is providing sign on bonuses to
6 certain employees in the ordinary course of its business in
7 order to encourage those people to accept an offer to work
8 and continue to work at Purdue.

9 Mr. Lowne would testify that the employees who
10 received sign on bonuses are in general, those that had a
11 vested stock -- a vested interest in stock options or a
12 bonus or other benefits at the company where they previously
13 worked and were leaving to join Purdue.

14 He would testify that these employees are highly
15 skilled individuals who have many options for employment,
16 and would have been unlikely to have chosen to work at
17 Purdue without the sign on bonus or to continue to work at
18 Purdue without the sign on bonus.

19 Mr. Lowne would testify that if these sign on
20 bonuses were to remain unpaid there would be a risk of all
21 of these individuals leaving Purdue.

22 Further, the non-payment of these bonuses would be
23 a strong signal about the nature of Purdue's business in the
24 face of the current bankruptcy filing and would create a
25 tremendous risk that other employees would leave the company

1 taking this as a sign of things to come.

2 Mr. Lowne would testify that this would cause
3 immediate and irreparable harm to the company if these
4 persons were to leave.

5 With respect to those participants in this program
6 that are due to receive payments in the next 45 days, Mr.
7 Lowne would testify that there are five such individuals who
8 are scheduled to receive a grand total of less than \$100,000
9 prior to our anticipated second day hearing, and that none
10 of those persons are insiders because none set policy at
11 Purdue, none have authority to make strategic decisions for
12 Purdue, none exercise any control over the company, none
13 were elected or appointed by the Board of Directors, and
14 none of those persons report directly to the Board of
15 Directors.

16 With respect to the advancement of legal fees for
17 current and former directors, officers and employees, Mr.
18 Lowne would testify that the ability of Purdue to advance
19 these legal fees to these persons is critical to Purdue.
20 That there would be an immediate and irreparable harm if
21 Purdue were unable to advance these legal fees.

22 Mr. Lowne would testify that Purdue is going
23 through a very difficult period currently as it faces an
24 unprecedented number of legal cases, and having just filed
25 for bankruptcy protection.

1 Mr. Lowne would testify that the amount of
2 litigation and the uncertainty that it creates has terrified
3 many current employees, into a feeling like there's a target
4 on their back, like any one of them could be next.

5 He would testify that these employees never
6 previously considered that they would have to hire a lawyer
7 and that that thought is terrifying.

8 In addition, the possibility of having to cover
9 legal fees would be economically devastating to many of
10 those employees, the majority of whom are making only 100 to
11 \$200,000 a year.

12 Mr. Lowne would testify that in order to show the
13 company's employees that the company continues to stand
14 behind them and that it will assist them if the next lawsuit
15 names them personally, it is critical that the company
16 continue to cover the legal expenses of its current and
17 former people.

18 The coverage of former employees is important,
19 because all current employees fear that they may be one day
20 former employees. And in addition, Mr. Lowne would testify
21 that this is a moral issue, as many former employees remain
22 friends with current employees.

23 Mr. Lowne would testify that if Purdue were to
24 cease advancing legal fees, employees would leave. Any
25 employees that did not leave would likely be scared,

1 distracted, and have a difficult time continuing to perform
2 at the highest level, and that all of that would cause
3 economic harm to the enterprise.

4 Mr. Lowne would testify that Purdue is taking
5 extreme precautions to ensure that the advancement of legal
6 fees is proper. First, any decision to advance legal fees
7 of any kind must be approved by the Special Committee of the
8 Board of Directors.

9 Second, Purdue is requiring each person for whom
10 the company is to advance legal fees to agree to reimburse
11 the company, if that person is ever found to have acted not
12 in good faith, or to have had reason to believe that his or
13 her conduct was unlawful.

14 Third, Purdue is also requiring each indemnity to
15 sign an affirmation that he or she believes that he or she
16 has acted in good faith and lawfully and acknowledging the
17 aforementioned reimbursement requirement.

18 Lastly, Mr. Lowne would testify that Purdue is not
19 advancing legal fees for any member of the family of the
20 Sackler family, and that Purdue ceased doing so on March 1st
21 of 2019.

22 Your Honor, that concludes the proposed proffer of
23 Mr. Lowne's testimony.

24 THE COURT: Okay. Does anyone want to cross-
25 examine Mr. Lowne?

1 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
2 for the U.S. Trustee's Office, I do have a few questions. I
3 do apologize, this is information that I'm getting in real
4 time, but I do have some questions.

5 THE COURT: Okay.

6 MR. SCHWARTZBERG: Some of the proffer was based -
7 - was this is what the employees are saying, this is what
8 the employees are feeling I think that's all hearsay.

9 THE COURT: Well, for the truth of the matter, but
10 it certainly can be introduced for what the company
11 understands. So do you want to cross-examine Mr. Lowne?

12 MR. SCHWARTZBERG: I have a few questions, Your
13 Honor.

14 THE COURT: All right. So, Mr. Lowne, can you
15 take the stand?

16 MR. SCHWARTZBERG: My one concern is, you know, I
17 received information this morning and there are names on it,
18 and I'm loathe to mention someone's names, understanding the
19 concerns the debtor has. Can I reference --

20 THE COURT: You can do it generically I suppose if
21 they know their job title.

22 UNIDENTIFIED: Can you do it by job title, would
23 that work?

24 MR. SCHWARTZBERG: That's fine.

25 THE COURT: Okay. All right. Would you raise

1 your right hand, please?

2 JON LOWNE, WITNESS, SWORN

3 THE COURT: And could you just spell your name for
4 the record?

5 THE WITNESS: Sure, it's J-O-N, L-O-W-N-E.

6 THE COURT: Okay.

7 CROSS-EXAMINATION

8 BY MR. SCHWARTZBERG:

9 Q Good morning, Mr. --

10 THE COURT: Before I -- Mr. Lowne, you just heard
11 the proffer of your direct testimony in this matter.
12 Sitting where you are today, you understand that is your
13 direct testimony.

14 THE WITNESS: I understand.

15 THE COURT: And is there anything you'd wish to
16 change in it?

17 THE WITNESS: Nothing I wish to change.

18 THE COURT: Okay. You can go ahead, Mr.
19 Schwartzberg.

20 MR. SCHWARTZBERG: Thank you.

21 BY MR. SCHWARTZBERG:

22 Q Good morning. My name is Paul Schwartzberg, I'm an
23 attorney with the U.S. Trustee's Office.

24 Under the retention plan there are numerous individuals
25 that are proposed to receive payment under -- the vice-

1 president of regulatory affairs, what is their job role?

2 A So they report to Paul Medeiros who's an insider. That
3 person looks after the regulatory affairs, aspects of that
4 company, as well as the research and development activities
5 under the leadership of Paul Medeiros who we have listed as
6 an insider.

7 Q And what is Mr. Medeiros' title?

8 A Mr. Medeiros I believe is SVP of Imbrium. I can't
9 recall his exactly title, it's one of our subsidiaries
10 that's responsible for advancing our pipeline and regulatory
11 matters related to our products.

12 Q And who does he report to?

13 A He reports directly to our CEO, Craig Landau.

14 Q The executive -- oh, I'll skip that.

15 The vice-president of sales and marketing, what is that
16 person's role?

17 A So that person is responsible for primarily the launch
18 of Adhansia which we launched earlier this year.

19 Q I'm sorry, I didn't understand that word.

20 A Adhansia, A-D-H-A-N-S-I-A. It's the only prescription
21 product that we market. We have a contract field force of
22 just about over 90 people so he's responsible for that brand
23 under the direction of our CEO, Craig Landau.

24 Q So he reports directly to the CEO.

25 A That is correct.

1 Q And this person, do you know their annual salary
2 ballpark?

3 A Not off the top of my head, I'm sorry.

4 Q Okay. The vice-president, chief security officer, who
5 does that person report to?

6 A I believe that person reports to Mark Kesselman, our
7 general counsel.

8 Q All right. And what is his --

9 UNIDENTIFIED: He reports to Karen?

10 THE WITNESS: I'm sorry, I've been corrected.
11 Reports to Karen Laurel, who's --

12 Q I didn't hear you, I apologize.

13 A Reports to Karen Laurel, who's the head of human
14 resources.

15 Q Okay. And then turning over to the roads technology
16 retention, the vice-president of sales and marketing,
17 RPharma (ph).

18 A Yes.

19 Q What is that person's job description?

20 A So that person is responsible for all customer
21 interactions. They report in to Vince Manicinelli who's
22 head of the generic business which is the entity Rhodes
23 Pharmaceutical LP.

24 Q And the person they report to, what is his title?

25 A I don't recall his exact title, I believe it's

1 President of Rhodes Pharmaceuticals, LP or something like
2 that. He's an insider.

3 Q And on the -- just turning over to the sign-on bonuses
4 --

5 A Sure.

6 Q -- I believe there are five people that you propose to
7 pay between now and the final hearing.

8 A That is correct.

9 Q Do you know -- can I ask, because I don't want to --
10 the range of salaries of those people?

11 A The range of salaries I think is -- these are
12 approximate numbers --

13 Q Yeah.

14 A -- I don't recall everyone's salary. I believe they
15 range from something like 140,000 to approximately over
16 300,000.

17 Q And are any of them officers or directors?

18 A No.

19 Q And the amounts you're paying them, is that the
20 entirety of their sign on bonuses or just a sub part --
21 portion of it?

22 A I don't know the specifics of each individual, but it
23 may well just be one part of their sign on bonus.

24 Q Do you know what -- the range for the five people,
25 their sign on bonuses were or are?

1 A I don't in totality, no, I know the amounts that are
2 going to be paid within the next several weeks.

3 MR. SCHWARTZBERG: Thank you.

4 THE WITNESS: Sure.

5 MR. SCHWARTZBERG: One moment.

6 Thank you.

7 THE COURT: Okay. So, Mr. Lowne, the people that
8 you just discussed in connection with the non-executive
9 retention plan and the sign-on program, do any of those
10 parties or people have control over other people's bonuses?

11 THE WITNESS: There are certainly people on the
12 list of retention. The way it works is that they will
13 recommend bonuses. The final actual bonus payments have to
14 be approved by our head of HR, by our president and by
15 myself, and then ultimately the proposals are taken to the
16 Board.

17 THE COURT: And other than Board approval, do any
18 of those people have any say over their own non-retention
19 plan bonus or sign on bonus?

20 THE WITNESS: Individuals have no say on their own
21 individual retention plan, no.

22 THE COURT: Not just -- I mean, there's review --
23 is there review of their plan or sign-on bonus beyond the
24 Board? Who reviews it besides the Board?

25 THE WITNESS: So for sign on bonuses they are

1 typically considered non-Board related matters, so sign on
2 bonuses are typically done through the human resources
3 department and the compensation experts. And really what
4 they're looking at is market data and the data of what their
5 vested --

6 THE COURT: What they gave up.

7 THE WITNESS: What they gave up to come to Purdue.
8 So that's outside of any Board process.

9 THE COURT: And what about the non-executive
10 retention plan?

11 THE WITNESS: So the retention plan was developed
12 very, very carefully with the head of HR, the president,
13 myself looking through the different organizations, talking
14 to the different organizations, understanding who is
15 critical to the ongoing operations of those different parts
16 of our business, and developing a plan, consulting in a lot
17 of detail with our external advisors, whether that was Alix,
18 PJT or Davis Polk. Ultimately the plan and the composition
19 of the plan went to the Board compensation committee for
20 approval.

21 THE COURT: Okay. All right. Any questions on
22 that?

23 MR. VONNEGUT: No, Your Honor, we have no
24 redirect.

25 THE COURT: Any redirect?

1 MR. VONNEGUT: No, Your Honor.

2 THE COURT: You can step down.

3 UNIDENTIFIED: Your Honor, do you want to leave
4 Mr. Lowne on the stand if there are other questions with
5 regard to other parts of the motion or do you want him to --

6 THE COURT: I'm not going to swear you in again
7 but you can sit down for now. Okay.

8 MR. VONNEGUT: Thank you, Your Honor, just one
9 data point that I did get. Paul Medeiros' correct title is
10 he's the President of Imbrium, the senior vice-president of
11 corporate and business development at Purdue Pharma LP and
12 at PPI.

13 THE COURT: Okay.

14 MR. VONNEGUT: Okay. So, Your Honor, just some
15 factual data points with respect to the non-executive
16 retention plan and what relief we are asking for today.

17 In between now and our contemplated second day
18 hearing there are 103 people who would be entitled to pay
19 outs under the non-executive retention plan. And that will
20 be their last pay out for the entirety of calendar year
21 2019. Frankly, this is just unfortunate timing that those
22 payments are falling due in between our first and second day
23 hearing.

24 You heard from Mr. Lowne that the company
25 undertook a rigorous analytical process to get comfortable

1 that none of those participants are insiders. And it's
2 important to note that for the participants in the plan, the
3 non-executive retention plan is a material component of
4 their overall compensation package.

5 THE COURT: And are the payments all made on the
6 same day?

7 MR. VONNEGUT: October 4th, Your Honor.

8 THE COURT: Okay.

9 MR. VONNEGUT: So this plan, you know, I mentioned
10 at the outset of the hearing that we very intentionally are
11 not seeking approval for anything new. This is an existing
12 program. This is not for these participants an extra bonus.
13 This is a part of the compensation that they expect for
14 doing their jobs and around which they plan their lives.

15 We are concerned that were these payments not
16 made, there's a very real risk the covered employees would
17 depart. And now it looks like Mr. Eckstein has --

18 MR. ECKSTEIN: Your Honor, I'm sorry, if I could
19 just have a minute to interrupt Mr. Vonnegut. But I thought
20 maybe as we go on, I was just going to inquire or just try
21 to confirm the amount of these payments --

22 MR. VONNEGUT: Yes, I was --

23 MR. ECKSTEIN: -- if Mr. Vonnegut put that on the
24 record, that would be useful.

25 MR. VONNEGUT: Sure. So for the record, Your

1 Honor, in between now and the second day hearing we're
2 seeking limited authority for the balance of 2019 and all
3 these payments would be made on October 4th. There's just
4 over \$916,000 in payments that are coming due for employees
5 of the Purdue debtors, and just below \$870,000 in payments
6 in total coming due for the Rhodes debtors.

7 Any further payments beyond those that fall due
8 after our second day hearing or that otherwise exceed those
9 amounts will be subject to separate order of the Court, and
10 we will seek approval for those in our final order.

11 THE COURT: Okay.

12 MR. VONNEGUT: Okay. Your Honor, with respect to
13 the sign on bonuses, I'll be brief. I think the core data
14 is in the record and was included in Mr. Lowne's testimony.
15 This is a very, very small group of participants that are
16 relevant between now and the final hearing, it's five
17 people. They are receiving in total under \$100,000 among
18 the five of them.

19 With respect to advancement of legal expenses --

20 THE COURT: And I'm sorry and that's --

21 MR. VONNEGUT: Sure.

22 THE COURT: -- when you say receiving, they'll be
23 receiving that before the --

24 MR. VONNEGUT: Before the second day hearing.

25 THE COURT: -- middle of October. All right.

1 MR. VONNEGUT: Correct. Between now and the end
2 of October.

3 THE COURT: Okay.

4 MR. VONNEGUT: Okay. So, Your Honor, with respect
5 to the advancement of legal expenses, Your Honor is very
6 well aware that the debtors are involved in over 2,600
7 pending civil actions.

8 A number of the debtor's current and former
9 officers, directors, and employees have been named in these
10 actions or called as witnesses. Historically consistent
11 with Purdue Pharma's organizational documents and its
12 longstanding customary policies the debtors have paid the
13 legal costs of these current and former officers, directors,
14 and employees that are either named as defendants, potential
15 defendants or witnesses in the pending actions.

16 It's very important to note, I said this once
17 already, but I want to be very clear and say it again.
18 Since March 1st of this year no debtor has made any
19 indemnification payment or advanced any legal fees to any
20 member of the Sackler family and we do not seek any
21 authority to do so.

22 We've received the question from a number of
23 stakeholders, so I'll address it for Your Honor, why can't
24 insurance cover this. The debtors do not maintain
25 sufficient insurance that would cover the legal costs of the

1 vast majority of the indemnities, there just is not enough
2 coverage there, which is why we're seeking authority from
3 the Court to continue our prepetition practice of paying
4 these amounts.

5 Given the nature of the expenses, it's difficult
6 to predict with certainty exactly what the quantum would be.
7 We tried to be conservative to give everybody as much notice
8 as possible and estimated that at the outset of the cases it
9 would not exceed roughly \$1.5 million per month, but I want
10 to emphasize that throughout these cases, and particularly
11 in the early days it is our fervent hope to reduce that cost
12 aggressively as we attempt to --

13 THE COURT: Well, can I --

14 MR. VONNEGUT: Sure.

15 THE COURT: This is -- these are payments of
16 amounts already incurred or amounts to be incurred?

17 MR. VONNEGUT: Amounts to be incurred. They --
18 because they are legal fees, of course, they depend on when
19 the relevant attorneys submit their bills, but we are
20 seeking authority to --

21 THE COURT: But it's for work that was --

22 MR. VONNEGUT: -- continue going forward.

23 THE COURT: -- done by counsel pre-bankruptcy?

24 MR. VONNEGUT: We can't know with certainty, Your
25 Honor, whether there are pending bills pre-bankruptcy that

1 had not been paid.

2 THE COURT: But it would include --

3 MR. VONNEGUT: Sorry if I'm being imprecise.

4 MR. HUEBNER: Your Honor, let me help, I'm just
5 getting information from the GC in the background. We're
6 largely current on the legal invoices. This is not a big
7 backlog of prepetition bills. There could be some that
8 straddle, but it's, you know, I think --

9 THE COURT: Okay.

10 MR. HUEBNER: -- in no small part for the current
11 and go forward.

12 THE COURT: All right. So obviously people could
13 be very creative in asserting litigation claims, but the
14 case law is pretty well established that if someone is being
15 sued, and this would certainly be the case if they're being
16 called as a witness, because of their actions really through
17 or as a proxy for the debtor the stay applies to them.

18 On the other hand if they're being sued for
19 something that is separate and apart and antithetical to the
20 debtor which is basically what you're getting them to swear
21 that they're not being sued for, then the stay wouldn't
22 apply.

23 MR. VONNEGUT: Correct.

24 THE COURT: Well laid out in the plus funds
25 DeSouza opinion.

1 MR. VONNEGUT: Yes, Your Honor, I think the unique

2 --

3 THE COURT: So I'm not -- I don't know why -- I
4 would think that in most cases the stay would apply to these
5 people --

6 MR. VONNEGUT: Well, Your Honor --

7 THE COURT: -- incurring any more legal fees.

8 MR. HUEBNER: We'd love to talk about that in
9 about a month.

10 THE COURT: Well, I don't think it's even -- you
11 know, it's one thing to -- I've talked about this before,
12 the case law in this area is very misleading when it talks
13 about extending the stay, because half the time that means
14 just declaring that the stay actually does apply to
15 somebody. But, I mean, the case law is really quite clear
16 on this, so I'm not --

17 MR. VONNEGUT: Yes, Your Honor. I can address
18 that if I may.

19 What this case has, the unique complexity is the
20 fact that the overwhelming bulk of the litigations are
21 brought by governmental actors, and it's not an issue for
22 today but there may well be assertions that those particular
23 litigations are not subject to the automatic stay.

24 The reason that we are seeking authority to
25 continue this practice is to address that uncertainty. We

1 would hope that all of the litigation, both against the
2 debtors and against employees, present and former could be
3 stayed but we can't be certain that it will be, which is why
4 in order to be cautious we're seeking the authority to
5 continue this practice in case we are not effective in
6 staying the litigation.

7 THE COURT: Or there's a determination that the
8 stay doesn't apply.

9 MR. VONNEGUT: Correct, Your Honor.

10 THE COURT: Whereas if there's a determination
11 that the stay does apply in this litigation as nevertheless
12 has been pursued, you would get this money back from the
13 governments or whoever is the plaintiff because it would be
14 violating the stay.

15 MR. VONNEGUT: Correct. And if we prevail in
16 staying the litigation then this --

17 THE COURT: Again, the stay is the stay.

18 MR. VONNEGUT: Yes.

19 THE COURT: Generally speaking, the person who may
20 be violating the stay should act with caution to seek relief
21 from the stay before doing it, as opposed to shooting and
22 then aiming.

23 MR. VONNEGUT: Yes, Your Honor.

24 THE COURT: And that applies to everyone,
25 including governments. The Supreme Court on down has ruled,

1 so this doesn't seem to be to me something that should be a
2 big expense if people act responsibly, which I would expect
3 governments to act responsibly over the next two to three
4 weeks.

5 MR. VONNEGUT: We couldn't agree more, Your Honor,
6 that is very much our hope. Again, we're just trying to be
7 conservative and cautious, but we share that view and that
8 hope.

9 THE COURT: Okay.

10 MR. SCHWARTZBERG: Your Honor, since most of these
11 or all of these are not yet incurred, it probably should be
12 kicked to the final hearing to at least allow the three or
13 four --

14 THE COURT: Well, I don't -- I'm not sure about
15 that. I'm not sure about that.

16 MR. VONNEGUT: Your Honor, I'll just briefly
17 respond to that.

18 THE COURT: To me this is like the facts, most of
19 them -- most of it would, in fact, not be incurred, but the
20 consequences of not paying it I think are quite serious.

21 MR. VONNEGUT: Correct, Your Honor. Our concern
22 is that this is about employee morale, this is about
23 messaging. This is, as much or more about telling people
24 that they are protected, then it is about actually paying
25 the bills. And so a time delay we think would be very

1 harmful.

2 THE COURT: Okay. Does anyone else have something
3 to say on these particular -- I gather that the U.S. Trustee
4 is opposed to these three categories of payments, correct?

5 MR. SCHWARTZBERG: Yes, Your Honor.

6 THE COURT: Okay. So I'm happy to hear you, Mr.
7 Schwartzberg, but does anyone else have anything to say on
8 any of these three categories?

9 MR. SCHWARTZBERG: Your Honor, I assume Your Honor
10 has ruled on the legal action, so I'm not going to belabor
11 that point.

12 THE COURT: No, I haven't. I was just trying to
13 get the facts and get a reaction from people.

14 MR. SCHWARTZBERG: These -- were this just a wage
15 motion I would not be standing here, Your Honor. As Your
16 Honor is aware typically wages -- the wage motion is to pay
17 the prepetition wages of the employees. It's capped
18 generally as a priority map if -- they're going to get
19 hopefully anyway.

20 This goes way beyond that. The presentation
21 provided by counsel I felt like I was transported two months
22 into the future and we're arguing on a KEIP or a KERP
23 motion. That's really what this is when you throw in the
24 four other motions, one is a \$26 million bonus payment.
25 Overall that's \$2.2 million worth of sign on bonuses that

1 they're asking, and millions more.

2 THE COURT: Well, not for today.

3 MR. SCHWARTZBERG: Not for today, Your Honor.

4 THE COURT: Okay.

5 MR. SCHWARTZBERG: A lot of that can be pushed,
6 but we believe all of it should be separated out and put on
7 a different motion where we're not talking about -- today
8 we're talking about what's an emergency motion to get the
9 wages paid for the employees. Usually as I said it's capped
10 at the 13,000.

11 The bonuses, the sign on bonuses being paid to
12 people who are pretty highly compensated may be up to
13 \$300,000 are in the, you know, not an insignificant amount
14 but all over the cap, ahead of the -- in excess of the
15 priority cap which they'll probably also -- or maybe also be
16 receiving under the wage motion. So we're talking a double,
17 triple just on the sign on bonuses, and those people make
18 significant salaries, they can wait till the final hearing
19 to have the creditors -- the committee, the ad hoc
20 committees review these -- rather than having these motions,
21 you know, dumped on Monday morning and having a hearing on
22 Tuesday morning.

23 THE COURT: Well, on the sign on bonuses, the
24 testimony was that no officers are included in those sign on
25 bonuses.

1 MR. SCHWARTZBERG: As I said, Your Honor, when you
2 -- every single sign on bonus except one, as I understand,
3 is almost double.

4 THE COURT: No, I understand. But if the concern
5 is that this is somehow violative of 503(c) it wouldn't
6 appear to be.

7 MR. SCHWARTZBERG: It's also a concern, Your
8 Honor, I think it's -- these are -- as I said there are --
9 it's a first day motion, you need to do what you only --
10 allow the minimum so as to allow the company to continue.

11 THE COURT: Right.

12 MR. SCHWARTZBERG: These people are highly
13 compensated they can wait till the last -- of the last
14 hearing date to allow the parties to -- other parties at
15 least to have proper notice of that motion, similar with the
16 non -- the retention plan that they spoke about. The
17 amounts there are even in excess of what's being on the sign
18 on bonus, in excess of the priority cap. I assume these
19 people, since I'm looking at the bonuses are pretty
20 substantial, retention payments, they could wait till the
21 final to allow proper notice of these motions to go out.

22 THE COURT: Okay. Well, why don't I hear the
23 comments before the company responds.

24 MR. ECKSTEIN: Your Honor, Kenneth Eckstein with
25 Kramer Levin on behalf of the ad hoc committee.

1 A couple of observations. First, Your Honor, I'm
2 sure you appreciate the members of the ad hoc committee have
3 not had the opportunity to review any of the details
4 surrounding this motion, and therefore, like I mentioned
5 previously, this is a motion where there is going to need to
6 be review and diligence before people can give any sign off.

7 That said, I think there was general willingness
8 not to object to ordinary course ongoing transactions and
9 much of the wages and other typical benefits that are
10 included in the motion are not objectionable.

11 I do commend the U.S. Trustee's office for making
12 the modifications that the debtor has agreed to because
13 those were consistent with our reaction and I think those
14 deferrals are all deferrals that are appropriate.

15 I do want to confirm, and I take Mr. Vonnegut at
16 his word, and Mr. Huebner, that none of the payments that
17 are being referred to here, particularly in connection with
18 the reimbursement of legal expenses, are going to any
19 members of the Sackler family, direct or indirect. We think
20 that's a very important item to underscore and we're going
21 to rely upon that representation.

22 As to the reimbursement of legal expenses, just
23 because of the uncertainty surrounding exactly who is
24 benefitting, it appears from the motion that it includes
25 former officers and directors, and it's not clear exactly

1 what justification there is in terms of -- from the debtor's
2 standpoint for former officers and directors and who they
3 are. Those would be items that I think ideally would be
4 subject to further diligence before it's authorized.

5 And with respect to the non-executive retention
6 plan I had a similar reaction as Mr. Schwartzberg, it
7 sounded more like a KEIP and KERP than a wage motion, but I
8 think with the limitations that have been put on the record
9 we will abide an interim order and defer our comments to the
10 final order, as long as everything is done on an interim
11 basis.

12 THE COURT: Okay. Anyone else?

13 MR. TROOP: Your Honor, Andrew Troop from
14 Pillsbury for the other ad hoc committee.

15 Your Honor, I'm not going to repeat anything that
16 Mr. Eckstein mentioned or the U.S. Trustee. I do, however,
17 have a question about the reimbursement of legal fees in
18 this particular case.

19 I under -- as I understand the process and as it's
20 been represented in the papers, the debtors are relying on
21 sort of a two-step process to make sure that funds that go
22 out, go out legitimately. Leave aside the credit worthiness
23 of the parties that are receiving it because we have no
24 information --

25 THE COURT: Right.

1 MR. TROOP: -- to be able to judge that.

2 So I'm just going to talk about the two-step. The
3 first is, is that you're asking the person who wants to get
4 paid, right, their legal fees, to attest to the fact that
5 they've done nothing wrong. And then --

6 THE COURT: I doubt that there will be few of
7 those turned back unsigned.

8 MR. TROOP: I agree, Your Honor, and I think
9 that's what really puts the importance on the second
10 guardrail that the debtors described. And as I understand
11 Mr. Lowne's proffered testimony to confirm, and that is that
12 the special committee of the Board of Directors will need to
13 approve these payments.

14 The standard under which that approval is going to
15 be made, however, at least based on the papers that were
16 filed, were whether it's in the best interests of the
17 company to make the payment. It was not whether the company
18 determines independently that the employee would qualify for
19 reimbursement of legal fees, because it hasn't done anything
20 wrong, that employee isn't for lack of a better word, Your
21 Honor, I'm not trying to cast any particular aspersions on
22 any individual, whether or not that employee is tainted by
23 the allegations involved in connection with the opioid
24 crisis, whether that employee acted outside the scope of his
25 employment in connection --

1 THE COURT: Right, so we should clarify that.

2 MR. TROOP: So I think that needs to be clarified.

3 I think the Board needs to -- the special committee of the

4 Board needs to make some --

5 THE COURT: I mean --

6 MR. TROOP: -- qualitative determination.

7 THE COURT: -- I guess we should -- by saying that
8 I don't want to give the impression that if there's another
9 legitimate reason to make the advance, because it's the best
10 interests of the company, but it would seem to me that, at
11 least in the first instance and perhaps always, the question
12 to ask is, would -- I look at it in bankruptcy terms. Would
13 this employee fall on the right side or the left side of the
14 rationale in the plus funds DeSouza case, you know, should
15 they be indemnified or not.

16 And generally speaking I think that would be the
17 inquiry. Now maybe there are other aspects that the Board
18 would have to -- the special committee would have to take
19 into account, but I think those would be highly unusual.

20 MR. TROOP: Agreed, Your Honor, and not to belabor
21 the point, I think that's exactly the point I'm trying to
22 make, because the issue with best interests of the company
23 is pretty broad. A, it's pretty broad, but in light of the
24 allegations that have been sought, it may also be to create
25 an environment in which employees can't testify about what

1 the company did wrong --

2 THE COURT: Well --

3 MR. TROOP: -- and again I'm not --

4 THE COURT: No, I don't --

5 MR. TROOP: -- ascribing ill will, Your Honor, or
6 ill intent, I'm just using that as a -- well, if --

7 THE COURT: If they're acting as, yeah, I mean,
8 the -- well, if they're properly indemnified, then they
9 should get paid their legal fees.

10 MR. TROOP: Yes, Your Honor.

11 THE COURT: I don't think there's any intention to
12 silence them, right?

13 MR. VONNEGUT: No, Your Honor.

14 THE COURT: Okay.

15 MR. TROOP: Again, Your Honor, I --

16 THE COURT: No, I think that's important to get on
17 the record, I understand your point.

18 MR. TROOP: I gave an outrageous example, Your
19 Honor --

20 THE COURT: Right.

21 MR. TROOP: -- to deal with the issue of the best
22 interest, Your Honor.

23 THE COURT: Okay. No, that's fair. All right.
24 Anyone else have anything to say on this issue or this --
25 these three issues?

1 (No response)

2 THE COURT: Okay.

3 MR. VONNEGUT: Thank you, Your Honor. I'd just
4 like to briefly address a few of the things that were said.
5 I'll start with the most important, which is what are the
6 guardrails that we have around this process because that's
7 something that this company takes very seriously, and that
8 we at Davis Polk and the other advisors take extremely,
9 extremely seriously.

10 So we very carefully designed the process to
11 ensure that payments are not made to any inappropriate
12 recipient. First, we have the approval, the body
13 responsible for approval of indemnification payments, which
14 is the special committee of the Board. I think it would be
15 extremely challenging to find a more respected and well
16 credentialed group of directors in corporate America. They
17 are the principal -- not the principal, the exclusive body
18 vested with authority to say yes or no to indemnification
19 requests.

20 In considering whether to improve -- to approve an
21 indemnification request Mr. Troop pointed that they will be
22 considering the best interests of the company. I think we
23 would stipulate that the best interest of the company would
24 not be served by reimbursing or advancing legal fees to
25 anybody that was suspected of wrongdoing.

1 THE COURT: Well, the other point is that you
2 wouldn't refuse to reimburse them if they were properly
3 indemnifiable.

4 MR. VONNEGUT: Correct, correct, Your Honor.

5 THE COURT: You wouldn't silence then, in other
6 words.

7 MR. VONNEGUT: That's right.

8 Now, another point that was kind of left out of
9 the description of our process which we view is very, very
10 important is there's really three legs to the stool. First,
11 the relevant person needs to attest to the special committee
12 that they satisfy the requirements for indemnification, that
13 they are -- they acted in good faith, in the best interests
14 of the company, they believed their actions were lawful.

15 The special committee needs to believe that, and
16 then the indemnitee commits to a disgorgement obligation, if
17 any of that turns out to be wrong, so there's an enforcement
18 mechanism.

19 THE COURT: But there's not really a credit
20 analysis here, and you've told that --

21 MR. VONNEGUT: That's --

22 THE COURT: -- this is really important to people
23 --

24 MR. VONNEGUT: That's true, Your Honor.

25 THE COURT: -- that don't have the money, so

1 that's -- I think -- I agree, that the real inquiry for the
2 special committee is indemnification warranted here because
3 they were really acting on behalf of the company --

4 MR. VONNEGUT: That's correct, Your Honor. We
5 didn't want the impression --

6 THE COURT: -- and not separately committing some
7 tort, right.

8 MR. VONNEGUT: -- it goes out the door and it's
9 forever gone.

10 THE COURT: No, I understand it too. There is
11 some internal effect, you can always get de volvo I guess,
12 but you know.

13 MR. VONNEGUT: Right. Okay. Then I'll just
14 briefly address some of the other points raised by Mr.
15 Eckstein and the U.S. Trustee's office.

16 With respect to Mr. Eckstein's concerns, these are
17 very easy. First, we will swear up and down in any form
18 required that no payments will go to the Sacklers, we want
19 to be very clear about that.

20 With respect to diligence on these programs, again
21 we understand that people are going to want to take time to
22 understand how the company handles this. We are ready,
23 willing, and able to provide any diligence that folks need,
24 so we're very enthusiastic about that.

25 With respect to the concerns raised by Mr.

1 Schwartzberg for the U.S. Trustee's office, I'll just echo
2 Your Honor's comments that the vast bulk of things with
3 which the U.S. Trustee's office takes issue are not for
4 today, they're not on for hearing today, we'll be back
5 before Your Honor before the end of October. We will
6 discuss those issues then.

7 That brings up my next point which is why are we
8 doing this, and why are we asking for authority to do this
9 now. And that is directly explained by the standard for
10 approval of this kind of relief early in the case. Failure
11 to make these payments we are concerned would cause
12 immediate and irreparable harm to the debtors.

13 When you stack up the potential risks to the value
14 of the enterprise that would arise from massive employee
15 attrition against the costs of these payments that are going
16 to go out the door in between now and the end of October, we
17 just really don't see any contest between those two things.

18 Lastly something else that Mr. Schwartzberg
19 mentioned was the 503(c) cap. We have no intention of
20 paying anything that is not permitted by Section 503(c) of
21 the Bankruptcy Code. That's in the order. So I just wanted
22 to state that on the record so it's abundantly clear.

23 THE COURT: Okay.

24 MR. HUEBNER: Your Honor, I apologize, I won't --
25 I'll take some lashes from Mr. Vonnegut here, because he

1 does not need my help. But Mr. Kaminetzky asked me to make
2 one point because we ended up having quite amorphous round
3 robin colloquy. And one thing I think is important to make
4 clear, and Mr. Kaminetzky quite validly pointed out.

5 The special -- we put in multiple layers here
6 precisely because of how seriously we think this and we
7 understand that none of this is simple. But what I think is
8 important is that we can't put an onus on the special
9 committee to have to determine that every indemnitee acted
10 lawfully before authorizing their lawyer's fees, because
11 that's not the job of three business people who are sitting
12 on a committee --

13 THE COURT: That's not what Plus One's DeSouza
14 (ph) requires.

15 MR. HUEBNER: Exactly. So I just wanted to make
16 clear because people were all different places when they
17 were at the podium and -- which sort of all kind of agree
18 with each other, but we need to be very clear because there
19 are Board members who need to be told what is being imposed
20 on them before they take formal board action.

21 And the idea taking into account the factors in
22 this case, in addition to ensuring that it's in the
23 company's best interest, to the extent if anyone
24 misunderstood the Court, I believe the special committee has
25 to certify this person did not do anything unlawful or else

1 they can't get their fees paid, no one could ask directors
2 to be in that position. This is a complex ongoing fluid
3 situation. I mean, I don't think anybody misunderstood --

4 THE COURT: Look, I don't think --

5 MR. HUEBNER: -- but I think the Board deserves
6 clarity.

7 THE COURT: I don't think -- I think everyone
8 understands as good as he was, former Judge Peck didn't
9 certify that the defendants in the DeSouza case were one way
10 or another. He did his best analysis of it and concluded
11 that they fell outside the indemnification provision.

12 MR. HUEBNER: And I knew -- I had a pretty good
13 (indiscernible) by most, but this is too serious to be
14 ambiguous about this. We have Board members who actually
15 have to sign things and do things.

16 THE COURT: Okay.

17 MR. VONNEGUT: Your Honor, I just have one further
18 clarification that was helpfully pointed out by Mr.
19 Eckstein. When we say that no payments will be made to the
20 Sacklers, we mean very broadly to or for the benefit of the
21 Sacklers. We are not paying them individually, we are not
22 paying their lawyers. So I just wanted that to be very
23 clear on the record.

24 THE COURT: Okay. All right. This is an interim
25 hearing but the request is for a significant amount of money

1 to be paid on two categories of obligations that are pretty
2 clearly prepetition obligations for the amounts that are at
3 issue here, namely the -- roughly \$1,600,000 of payments
4 coming due in the first week of October and the non-
5 executive retention plan and the under \$100,000 of payments
6 coming to, in all likelihood, before the final hearing on
7 this motion on the sign on bonus program, far exceed the
8 junior priority cap for unpaid wages of \$13,660 in Section
9 507 of the Bankruptcy Code.

10 That is not a really dispositive fact, however.
11 The payment of any prepetition obligation with the exception
12 of an administrative expense under 503(b)(9) varies the
13 priority scheme of the Bankruptcy Code. So the Court needs
14 to examine whether or not withstanding that priority scheme
15 the payment provides a net material benefit to the estate
16 and creditors, and in an interim hearing like this, in
17 addition the Court needs to determine that the payment is
18 necessary to avoid immediate and irreparable harm to the
19 debtor's estate and creditors.

20 Given the size of the payments, I certainly
21 understand the U.S. Trustee's position, particularly given
22 the fact that its office generally has more notice on these
23 types of first day motions than anyone else, and
24 consequently is looked to to take a reasonably conservative
25 view on the request for relief.

1 On the other hand, it's clear to me from the
2 record in this case that this is a highly unusual case, in
3 that the debtors have determined to turn over their
4 businesses to their claimants through a plan process that
5 lays out a reasonable mechanism for determining who those
6 claimants are and how they would receive the value in the
7 business.

8 So all of the claimants in essence have the same
9 interest in maximizing the value of the business and
10 avoiding immediate and irreparable harm to the business.

11 The two largest groups of those claimants, while
12 expressing their reservations about the entirety of the
13 relief sought in this motion have made it clear to me in
14 this hearing that they do not oppose the request for relief
15 that the U.S. Trustee as opposed, and no one else has spoken
16 up either.

17 I think that says a lot as to the need to preserve
18 the status quo pending further due diligence and is being
19 sought clearly in their capacity as future owners of the
20 business and beneficiaries of all of that value, without any
21 real dispute as to whether existing owners or secured
22 creditors or the like would have a different view.

23 Giving that and given my determination based on
24 Mr. Lowne's testimony that none of the parties who would be
25 the beneficiaries of the interim relief would, in fact, be

1 insiders, and therefore, the debtors would run afoul of
2 Section 503(c) of the Bankruptcy Code, I believe that this
3 relief is warranted under the standards that I've already
4 articulated.

5 In other words, not only are these payments
6 necessary to avoid immediate and irreparable harm to the
7 debtor's estate, and necessary and beneficial to the estate
8 after taking into account the Bankruptcy Code's priority
9 scheme but none of the beneficiaries is an insider based on
10 my evaluation of the testimony as opposed to the debtors
11 simply saying they're not an insider.

12 None of them is in a position effectively to
13 determine his or her own award which is Congress' primary
14 concern in Section 503(c) by those who have the ability to
15 feather their own nest in a bankruptcy case shouldn't have
16 that ability.

17 Secondly, they clearly don't make policy generally
18 and report to those who do.

19 As far as the legal fee, I think we've discussed
20 that sufficiently. I hope this doesn't actually rise to the
21 level where there are significant expenses to be paid, given
22 what I've said about the reach of the automatic stay and the
23 need to aim for astentute (ph) later as opposed to the other
24 way around, namely one should seek relief from the stay if
25 there's any question as to whether it applies or not. And

1 generally speaking, there's clear guidance as to when the
2 stay would apply to a lawsuit against a director, officer,
3 or former employee and when it does not, and that generally
4 coincides with state law indemnification rights, which I
5 believe are largely consistent with what the debtors have
6 laid out in their pleading and clearly consistent with
7 what's been set forth on the record today.

8 Obviously the debtors and their special committee
9 cannot guarantee that someone would fall out of an
10 indemnification, but they can make a reasonable evaluation
11 as to whether they can or cannot, and that's an appropriate
12 check on the payment, as well as the other requirements for
13 receiving the advancement of legal fees.

14 For each of these obviously there will be due
15 diligence going forward, so there should clearly be a record
16 as to the thought process in making each of these payments,
17 which will be shared with the parties who will be conducting
18 due diligence.

19 So you can e-mail the order as revised in
20 paragraph 19, but otherwise I think it stays the same.

21 MR. VONNEGUT: Thank you very much, Your Honor, we
22 will do that.

23 THE COURT: Okay.

24 MR. VONNEGUT: So, Your Honor, that takes us to
25 item number 16 on the agenda which is our critical vendors

1 motion. We're hopefully getting close to the end here.

2 This motion is Docket No. 9, Agenda No. 16. Under
3 this motion we are seeking authority to pay certain claims
4 owed to critical vendors. The vendors that we are seeking
5 authority to pay, we want to pay claims that are secured by
6 trade liens are subject to 503(b)(9) priority, as well as
7 other critical vendor claims, but with that third category
8 limited to an amount not to exceed \$7.7 million.

9 Again, I'll just make clear things that we are not
10 seeking authority to do. We're not seeking authority to pay
11 or satisfy any prepetition obligations to any shareholder of
12 the debtors or any non-debtor affiliate of any shareholder
13 of the debtors.

14 As you'll see, Your Honor, we've done our best to
15 ask for very, very limited critical vendor relief here. In
16 sizing the request, the debtors carefully reviewed all of
17 their key suppliers to determine which ones are sole source
18 or limited source, and which suppliers we could get by
19 without, which suppliers would be prohibitively expensive to
20 replace, which would present an acceptable risk to the
21 operations if we lost access to their services, which might
22 assert trade liens or 503(b)(9) priority claims, who might
23 credibly threaten self-help and the extent to which
24 suppliers may believe themselves not subject to the
25 automatic stay.

1 Lastly we considered the debtors relative
2 commercial leverage over each vendor to determine frankly
3 whether their dependence on us would allow us to not pay
4 them and still secure ongoing access to their services and
5 goods.

6 This analysis led us to a conservative estimate of
7 \$7.7 million as the top end of the amount that we may need
8 to pay to ensure the continued supply of critical goods and
9 services to keep the business running.

10 On this point, Your Honor, I'll just briefly note
11 that in this highly regulated industry critical really does
12 mean critical. Nearly every change to a vendor or input in
13 the debtor's supply chain can require regulatory approval,
14 sometimes multiple regulatory approvals. And so if we need
15 to swap out critical vendors, one or two of those the cost
16 of that can very quickly eclipse the amount of money we're
17 asking to pay the critical vendors.

18 The vendors are broken down into six principal
19 categories which I'll cover very briefly. These are
20 described exhaustively in the motion.

21 We have operations and supply chain vendors who
22 provide ingredients, equipment, components, storage, freight
23 carriers, clinical trial vendors, security vendors, waste
24 management and foreign vendors. Both with respect to
25 security vendors and waste management it's just worth noting

1 that given the nature of the debtor's enterprise these are
2 critically important. We need people who are credentialed
3 to deal with hazardous waste and secure controlled
4 substances, so that's a limited population.

5 Foreign vendors is a pretty limited population,
6 but there are a small number of foreign vendors who are
7 critical.

8 One important thing to note again going back to
9 just giving all parties in interest abundant comfort here,
10 the Sacklers do have an ex-U.S. pharmaceutical business
11 under the name of Mundipharma. None of these entities that
12 are we seeking permission to make payments to are associated
13 with Mundipharma.

14 The large foreign vendors who are included in this
15 population provide goods and services including critical
16 production machinery, clinical study assistance and data
17 analytics related to our industry.

18 The process that we intend to use for evaluating
19 and paying critical vendor payment requests is very
20 standard. We want to try to use as little of this
21 authorization as we possibly can while still maintaining
22 access to critical goods and services.

23 In order to do that, we're seeking authority to
24 identify critical vendors in our business judgment.
25 Identifying them now, as Your Honor is well aware, would

1 likely cause all such critical vendors to immediately demand
2 payment in full, defeating the purpose of this motion which
3 is to limit the amount of money that we have to spend.

4 Conversely allowing the debtors to flexibly
5 identify and pay critical vendors will allow us to negotiate
6 with them zealously to protect estate resources.

7 As a condition to payment, we would propose that
8 each critical vendor that wants to receive a payment of
9 their prepetition claim has to agree to a standard vendor
10 agreement that would require them to continue to supply
11 goods and services on normal and customary trade terms that
12 are most favorable to the debtors in effect between relevant
13 critical vendor and the debtor's prior petition date.

14 THE COURT: Although as I read it, that's not an
15 absolute condition?

16 MR. VONNEGUT: Correct, Your Honor, we're --

17 THE COURT: But you're going to use your best
18 efforts to get them to agree.

19 MR. VONNEGUT: That's exactly right.

20 THE COURT: They should have the understanding
21 that if they don't agree they may not stay on the list.

22 MR. VONNEGUT: Correct, correct. We're just
23 trying to include a safety valve if we have an emergency
24 situation.

25 Payment of critical vendor claims will include a

1 communication specifying that by accepting payment the
2 creditor agrees to those terms, and as a further condition
3 of receiving payment on a vendor claim we propose that
4 critical vendors would have to agree to take whatever action
5 is necessary to remove any existing trade liens at their
6 sole cost and expense.

7 Your Honor, we received very limited comments on
8 this motion, principally from the U.S. Trustee's office, I
9 think that we have accommodated a lot of those concerns,
10 although I'll defer to Mr. Schwartzberg as to whether we've
11 addressed all of them.

12 We do have a modest revision to the order if I may
13 approach Your Honor.

14 THE COURT: Okay.

15 MR. SCHWARTZBERG: Could we see it?

16 MR. VONNEGUT: Oh, yes. I think you did. Here.

17 MR. SCHWARTZBERG: Thanks.

18 THE COURT: Right, it's a good comment.

19 MR. VONNEGUT: So this again, Your Honor, this is
20 something that we intended to do. So it's a comment we were
21 happy to accommodate. We are going to consult with our main
22 stakeholders on whether any of these payments are a good
23 idea or bad idea as we go forward.

24 THE COURT: And if there is a large constituency
25 that isn't in this data group that is prepared to keep it

1 confidential, then I think, you know, you should be sharing
2 it with them.

3 MR. VONNEGUT: Absolutely, Your Honor.

4 THE COURT: I don't think you have to put that in
5 the order, but that's what you should be doing.

6 MR. VONNEGUT: Yes, and we're happy to do that.

7 THE COURT: Okay.

8 MR. VONNEGUT: So unless Your Honor has any
9 questions I'll cede the podium to Mr. Schwartzberg and I'll
10 just reply to whatever.

11 THE COURT: Well, I -- it wasn't clear to me, are
12 these -- are any of these vendors that are owed significant
13 amounts parties to executory contracts, or are these, you
14 know, more like purchase order regular service --

15 MR. VONNEGUT: With apologies, Your Honor, I'm
16 just going to briefly consult.

17 (Pause)

18 MR. VONNEGUT: Your Honor, it's a mix. Some of
19 the critical vendors do have contracts, some are just under
20 purchase orders.

21 THE COURT: Because generally speaking, you -- at
22 least as far as I'm concerned, you've laid out the risk of
23 factors to consider --

24 MR. VONNEGUT: Uh-huh.

25 THE COURT: -- or the appropriate factors to

1 consider. They're listed in footnote 4, but I would add one
2 other, which is, is the vendor a party to an executory
3 contract --

4 MR. VONNEGUT: Uh-huh.

5 THE COURT: -- they cannot stop performing under.

6 MR. VONNEGUT: Yeah, absolutely, Your Honor, we're
7 happy to add that to the list.

8 THE COURT: Okay.

9 MR. HUEBNER: And, Your Honor, for the avoidance
10 of doubt it's not related to this motion, but it is
11 important to us. So the Court understands, we actually
12 stand ready to deal with anyone who tries to stop doing
13 business with us in ways that we believe are not legal.

14 THE COURT: Right.

15 MR. HUEBNER: We have a very nice letter that goes
16 first --

17 THE COURT: Okay.

18 MR. HUEBNER: -- and next friendly goes next, and
19 we have papers that that come to this Court if those fail.
20 Believe me, we fully intend to enforce all the executive
21 contracts that --

22 THE COURT: And that's fine, but I also want to
23 make clear if there's an entity that is critical and they
24 have no meaningful assets in the U.S., and they have an
25 executory contract, if I were the debtors I would authorize

1 the payment, but on the conditions that are laid out here.
2 So it's not an absolute requirement, but it would seem to be
3 in most cases parties should understand that to have an
4 executory contract their remedy is limited to asking the
5 Court for an order compelling assumption or rejection, and
6 if they have a lien on something for adequate protection.
7 And that the -- I assume the experienced people who will be
8 making the determinations on an entity-by-entity basis will
9 take that into account.

10 MR. VONNEGUT: Very much so, Your Honor. We view
11 payment of the critical vendor claims as a last resort to
12 only be used when necessary.

13 THE COURT: Okay.

14 MR. SCHWARTZBERG: Your Honor, just -- Paul
15 Schwartzberg once again for the record. We had spoke with
16 counsel and they had some language in here that we're not
17 completely sure what it means.

18 THE COURT: Okay.

19 MR. SCHWARTZBERG: Our agreement or what we saw
20 today, we're going to provide the parties with a list of the
21 critical vendors, to the extent that they went beyond it,
22 they'll provide us that information ahead of time, I'm not
23 sure that's what's in here -- that's actually articulating
24 what's in here, I'm not sure what reasonable time this
25 information means. For lack of a better term, we were using

1 the word list, so I would like if the counsel can confirm
2 what actually is -- yeah, and then obviously if the Court
3 wants -- I mean, let me hear the answer, but also if the
4 Court wants --

5 MR. VONNEGUT: Sure.

6 MR. SCHWARTZBERG: -- that information as well.

7 MR. VONNEGUT: Your Honor, we're happy to provide
8 a list so long as it's done confidentially to the Trustee
9 and to the Court.

10 THE COURT: Okay. So you say including a list?

11 MR. SCHWARTZBERG: That's fine, Your Honor.

12 THE COURT: Okay. All right.

13 MR. VONNEGUT: Unless Your Honor has any
14 questions.

15 THE COURT: Well, does anyone have anything to say
16 on this motion?

17 MR. ECKSTEIN: Your Honor, Kenneth Eckstein again
18 on behalf of the ad hoc committee. Similar reservation on
19 this issue, this has to be reviewed. The one question that
20 we had that we had raised yesterday evening was to try to
21 get a sense of what percentage of the prepetition trade debt
22 this relief represented. I don't know whether the company
23 is in a position yet to respond, but that was an issue that
24 we had raised.

25 MR. VONNEGUT: Sure. I don't have exhaustive

1 statistics at the ready. Overall, the company does not have
2 a lot of outstanding trade debt. I think you'll see in the
3 list of creditors that there are not many material trade
4 creditors.

5 THE COURT: Okay.

6 MR. VONNEGUT: Other than those addressed by the
7 customer programs motion.

8 THE COURT: Well, I mean, again to me the issue is
9 the failure to make these payments cause immediate and
10 irreparable harm to the debtor's estate. Almost by
11 definition that's the case. The devil's in the details. I
12 think with the one point that I raised, you've identified
13 the right details for the inquiry.

14 You know, this sharing of information can start
15 right away. You don't have to wait till the next hearing.
16 You know, you can sit down with whoever it is that -- your
17 financial advisor and/or Davis Polk and just make sure
18 they're looking at it right, given the experience of the
19 people involved I think they will be.

20 But I've always been of the view that these types
21 of motions necessarily need to leave the discretion with
22 people who both know the business and know the Bankruptcy
23 Code and leave it up to them with appropriate monitoring by
24 the parties in interest. Because it's some level keeping
25 the list general and not particularized and just dealing

1 with the factors ensures that all the critical vendors will
2 get paid and on the proper credit terms.

3 So I will grant the motion for the reasons stated
4 in the motion as modified by the change for the order.

5 MR. VONNEGUT: Thank you very much, Your Honor.
6 With that, that brings us to the last item on the agenda,
7 the foreign representative motion and for that I'll cede the
8 podium to my partner, Mr. Graulich.

9 THE COURT: Okay.

10 MR. GRAULICH: Good afternoon, Your Honor, Timothy
11 Graulich of Davis Polk & Wardwell. As Mr. Vonnegut just
12 indicated, we've saved the cross-border element of our
13 presentation to the very end. But also, Your Honor, just to
14 also borrow a phrase that you have indicated I think twice
15 throughout the proceedings today, this is also a motion
16 designed to help encourage creditors who are outside the
17 United States to aim first. That is really what this motion
18 is frankly all about.

19 As mentioned earlier, the debtors or some or all
20 of the debtors are subject to some 2,600 lawsuits and
21 counting, 13 of which of these are in Canada. And they're
22 described in the motion, there's 12 either class actions or
23 purported class actions and claim by a single claimant.

24 And the intention here is to commence an enounced
25 to trial Mono Law (ph) proceeding in Canada under the CCAA.

1 As Your Honor is well aware in the United States, there is a
2 presumption under 1516(a) about being able to presume if a
3 foreign court has established a foreign representative that
4 you can make a conclusion and presume, in fact, that that is
5 a foreign representative.

6 The CCAA is different in the sense that under
7 Section 45 and 46 of the statute there really seems to be --
8 it's not just they can presume, but they really ought to be
9 somebody who's appointed in the foreign case who has the
10 role of a trustee effectively.

11 Now, we could make the argument that under 1107
12 the debtor in possession is the trustee for all purposes,
13 but again we just want to make this as clear as possible,
14 and therefore, we'd be asking -- this motion is asking under
15 Section 1505 to designate the lead debtor PPLP as an entity
16 to represent these estates in a foreign proceeding. The
17 foreign proceeding that we currently are thinking of
18 commencing is the one I just referred to, the one in Canada.

19 Just in case Your Honor is concerned about or is
20 curious about, is this the beginning of many -- maybe many
21 such requests because perhaps there's litigation throughout
22 the world. As far as I'm aware, Canada is where the non-
23 U.S. litigation is located. I'm aware of -- to be precise,
24 I'm also aware of a U.K. insurance proceeding which I don't
25 think we're currently considering commencing a Mono Law with

1 proceeding to specifically deal with that.

2 But here we are considering and intending to
3 commence a Mono Law proceeding under the CCAA, and request
4 that Your Honor enter an order authorizing PPLP to act as
5 foreign representative. As far as I know, we have not
6 received any comments to this request.

7 THE COURT: Okay. Does anyone have any say on
8 this motion?

9 MR. MASAMUTO: Good afternoon, Your Honor, Brian
10 Malamute for the Office of the United States Trustee.

11 As Your Honor is probably aware this is not a
12 typical motion and certainly not a first day motion that
13 we've seen routinely. I was just wondering if counsel could
14 perhaps explain any consequences for not deferring this
15 order till the final hearing.

16 THE COURT: Well, the litigation is ongoing,
17 right?

18 MR. GRAULICH: The litigation is ongoing and in
19 one -- first of all the litigations ongoing our counsel is
20 going to court on a fairly regular basis.

21 THE COURT: I know it's cheaper in Canada, but
22 it's still an ongoing expense.

23 MR. GRAULICH: Every penny counts, Judge.

24 THE COURT: And there are issues of -- about issue
25 preclusion and the like, so.

1 MR. GRAULICH: And also, Your Honor, just as is
2 the dynamic in the United States we are being -- there is a
3 process to join the American debtors to Canadian class
4 actions. These aren't just against the debtors, there are
5 other joint defendants. And so, you know, in early October
6 there was a motion to join the debtor to a class action.

7 THE COURT: Okay. I understand why you're
8 bringing it now, it's a question worth asking, but it's
9 clear to me that there's, as you said, I think most courts
10 including the Canadian courts would assume that the debtor
11 in possession would qualify, but this makes it crystal clear
12 and depending on the judge in Canada you might need that.
13 So I will grant the relief and designate the named Purdue
14 Pharma LP as the foreign representative under Section 1505
15 of the Bankruptcy Code.

16 And if and when you do file I would urge you all
17 to follow the court-to-court guidelines that have been
18 adopted by general order here, and either have it adopted or
19 in the process of being adopted as a practice guideline in
20 Canada --

21 MR. GRAULICH: I was going to mention that, Your
22 Honor. I know obviously you -- we are all aware of the
23 guidelines, we are also aware of Your Honor's role in
24 bringing them to the Southern District, so.

25 THE COURT: That's not why I raised it. I mean --

1 MR. GRAULICH: But we'll -- but we will --

2 THE COURT: -- obviously the prospect of multi
3 defendant litigation warrants some coordination.

4 MR. GRAULICH: Agreed, Your Honor.

5 THE COURT: Okay.

6 MR. GRAULICH: Thank you.

7 THE COURT: Very well. Does anyone have anything
8 further to say for today's purposes?

9 UNIDENTIFIED: (indiscernible)

10 THE COURT: Okay.

11 MS. CYGANOWSKI: Very briefly, Your Honor. Thank
12 you. I'm Melanie Cyganowski, Otterbourg PC, co-counsel to
13 the ad hoc committee that Mr. Huebner referred to in his
14 opening remarks.

15 This ad hoc committee includes representatives of
16 the bipartisan group of the 29, specifically 24 states and 5
17 territories or the Attorney Generals or their equivalents,
18 together with the MDL PEC and several other governmental
19 parties.

20 These parties have collectively supported the
21 framework by which we hope and seek resolution with the
22 debtors. We appreciate that it's been a long road to get to
23 this point, we all keenly appreciate that there's a long
24 road to come.

25 One of the reasons I rise is to address one of the

1 questions that the Court throughout -- during the course of
2 its colloquy about communication the parties, and I can
3 assure the Court that there is indeed robust communications
4 within and among and between the various Attorney Generals
5 throughout the country.

6 And to make the point that whether they differ on
7 their views regarding this particular case, they stand
8 united in their steadfast belief and commitment that they
9 are undertaking what they each believe is in the best
10 interests of their constituents.

11 Those Attorney Generals who are supportive of this
12 settlement framework believe that it's critical to start the
13 healing by among other things seeking a resolution and
14 quicker and significant money to treatment for their folks,
15 and to stop the litigation costs that we know inevitably
16 follows from conflicts litigation.

17 With that, I would like to just briefly cede the
18 podium to Mr. Molton.

19 THE COURT: Okay.

20 MR. MOLTON: Thank you, Ms. Cyganowski.

21 Your Honor, just a second my role here on behalf
22 of the committee is to describe what the plaintiff's
23 executive committee is, just so it's clear. I know Mr.
24 Huebner talked about it, it's been referenced.

25 And it's the Court appointed plaintiff's executive

1 committee with co-lead counsel in the National Prescription
2 Opioid, MDL which is Docketed at 17-ND-02804 in the Northern
3 District of Ohio and presided over by Judge Polster. We
4 have with us today, Your Honor, the two co-lead counsel in
5 the audience, Joe Rice and Paul Hanling (ph) who have been
6 working extremely hard with the debtors, and with all of the
7 various state, municipal and private claimant constituents
8 and stakeholders in this case.

9 I know that there's been reference to what the MDL
10 contains, and I just want to give you a brief statement what
11 it encompasses without getting into the weeds. There's
12 2,288 cases, Your Honor, municipalities, cities, towns, and
13 villages all across the United States. Some representing
14 some of the most popular cities and counties in the United
15 States.

16 Also, Native American tribes, and not just
17 government entities, Your Honor, but also hospitals, third
18 party payors and individuals as well.

19 So within that 2,288 cases how many are referenced
20 against Purdue and/or the Sacklers or debtor affiliates. I
21 know Mr. Huebner in his papers talks about the fact that at
22 present and it's a changing number, but approximately 2,600
23 cases nationally in the United States civil actions against
24 Purdue or the Sacklers, of those 2,600 cases, Your Honor, my
25 best information is 2,259, that is all but 350 are presently

1 pending and reside in the MDL in front of Judge Polster.

2 And as Your Honor heard from Mr. Huebner and from
3 my co-counsel the MDL executive committee and co-lead
4 counsel have voted to recommend the settlement framework to
5 the MDL plaintiffs.

6 And I should also say that in addition to co-lead
7 counsel there's 16 other executive plaintiffs, executive
8 committee members constituted by some of the most recognized
9 or renown specialists in mass tort litigation in the United
10 States and three liaison counsel.

11 So I just wanted to give a flavor, Your Honor, for
12 the plaintiff's executive committee and co-lead counsel and
13 what they bring to the table.

14 THE COURT: Okay. Thank you.

15 MR. TROOP: Your Honor, I'll note there's only one
16 lawyer here for the other committee. The -- Your Honor, I
17 don't want to end on a down note on this hearing, and I'm
18 going to cede the podium in a minute to David Nachman who is
19 with the New York Attorney General's office and heads their
20 opioid and impact litigation division to talk about some of
21 the cooperation issues that you talked about.

22 But, Your Honor, and I know this isn't lost on
23 you, we're talking about an opioid crisis that accounts for
24 an average of 130 deaths a day. Currently 130 deaths a day.
25 The burden, the responsibility for dealing with that falls

1 primarily on the states, it doesn't fall on the debtors, it
2 doesn't fall on the other creditors, it falls on the states.

3 The states have unique recognized responsibilities
4 to ensure the health and safety of their citizens and their
5 regulatory framework. And while this case overlaps a
6 variety of issues with regard to this debtor, and these
7 debtors, it does so in the context of this crisis and its
8 responsibility.

9 We're well aware of the framework of the
10 construct, whatever it's being called with regard to a
11 settlement, but Your Honor, let's just think about a couple
12 of things that were said today.

13 I think it was Mr. Huebner who said there's
14 potentially hundreds of billions of dollars' worth of
15 damages being asserted. And while I know it's not meant
16 this way, the fact that the parties who are creditors and
17 contingent creditors of this enterprise will end up with the
18 value of this enterprise and not its owners, is not
19 reflective of a gift so to speak. It's reflective of an
20 economic reality, a bankruptcy driven economic reality.

21 Your Honor, you talked today about in many ways
22 and Mr. Huebner did as well about the need to have the
23 sharing of data, communications and the like. And we look
24 forward to that opportunity. We look forward to that
25 opportunity in the context of this case and in others.

1 Finally, Your Honor, just like Mr. Huebner, though
2 I think he's done a much better job of laying out for you
3 the likely factual and other issues that will come down the
4 pipe in connection with matters that weren't before you
5 today.

6 Obviously I -- our (indiscernible) decision not to
7 respond to those specifics today. I know Your Honor
8 understands is not an acceptance of any of those
9 representations towards the obligation of the law, the
10 importance of the balance here, the application of the stay
11 and its exceptions, or the power of the Court, all of those
12 things will be resolved and dealt with separately. Resolved
13 potentially by you, dealt with separately or if possible
14 resolved by the parties.

15 That said, Your Honor, I -- they don't need to
16 hear it from me at all, but it is always a pleasure to
17 listen to Mr. Huebner and his team present matters to the
18 Court. They are articulate, their vocabulary is expansive,
19 it is -- and notwithstanding, quotidian, I've got to go look
20 up quotidian and notwithstanding whatever differences any of
21 us in this courtroom might have, I look around and I think
22 we all look around and see faces that we know very well and
23 that we respect highly. And I expect that that will come
24 through in every hearing that we have before you. And I
25 look forward to that, thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. TROOP: If Mr. Nachman could have one minute,
3 Your Honor.

4 THE COURT: Okay.

5 MR. NACHMAN: Your Honor, just briefly David
6 Nachman from the Attorney General's office on behalf of
7 Attorney General Leticia James and the people of the State
8 of New York.

9 I just want to address an implicit concern that
10 might have been contained in your earlier observation that
11 Ms. Cyganowski also addressed briefly, which is that the AGs
12 do talk to each other, and they talk to each other quite
13 often and quite well.

14 As this hearing today illustrates there will be
15 issues on which we have a common interest, and maybe even a
16 common proposed resolution. They include issues like the
17 customer program that Mr. Eckstein already addressed some
18 comments to. And ultimately they address a very thorny
19 issue, which is not actually even addressed by the debtor's
20 proposed conceptual or settlement framework, which is the
21 eventual allocation as among all of these unsecured
22 creditors at different levels of governmental unit and how
23 that's all going to work, a subject which is presently
24 conspicuously absent from the proceedings and which
25 ultimately if there's going to be any confirmable plan of

1 reorganization it'll have to be addressed.

2 As the hearing also illustrates, there are points
3 on which we disagree, and disagree quite pointedly. Having
4 again to do primarily with the conceptual framework, I want
5 to assure the Court that the opposing states, the states
6 that are not convinced of the merits of that plan intend and
7 I fully expect will cooperate in the guise of the ad hoc,
8 the other ad hoc committee in pursuing vigorous, vigorous
9 due diligence into the dependence and deliberations of the
10 so-called independent committee, as well as the fraudulent
11 conveyance claims that we've asserted, and that perhaps now
12 belong to the estate, as well as the public benefits that
13 either are attached to or not so attached to the infant and
14 early development stage treatment drugs that have been
15 mentioned as part of a plan here.

16 I think that some of my AG colleagues there in the
17 back row who support this plan obviously do not have the
18 same interest as supporters of the plan to pursue that due
19 diligence aggressively and appropriately. We certainly --

20 THE COURT: Maybe they've already done it, I don't
21 know.

22 MR. NACHMAN: No comment.

23 THE COURT: Okay.

24 MR. NACHMAN: No comment. And as -- we certainly
25 have different views and different experience in terms of

1 our aggressive pursuit of some of these issues, including
2 obviously payments to and among members of the Sackler
3 family. And I just wanted to emphasize to the Court that we
4 will, of course, cooperate on all matters of common interest
5 with members of the other ad hoc committee, some of whom are
6 also in the middle row, and friends of mine, but where we
7 differ we intend to cooperate within our own group of
8 states, some of whom have different opinions and different
9 perspectives, obviously, but we will make a maximum effort
10 to come to Your Honor with a unified voice, counsel voice,
11 and we look forward to a most efficient possible proceeding
12 here. Thank you.

13 THE COURT: Okay. Thank you, I appreciate that.

14 And, you know, to be clear, one of the functions
15 of a bankruptcy case is to enable due diligence into the
16 debtor's estate, so there's nothing wrong with that.

17 MR. MACLAY: Your Honor, may I be heard?

18 THE COURT: Sure.

19 MR. MACLAY: Your Honor, it's Kevin Maclay, Your
20 Honor, from Caplin & Drysdale. I just wanted to clean up
21 one thing in the record.

22 THE COURT: The on the fence committee.

23 MR. MACLAY: I am on the multi-state governmental
24 -- I represent them I should say.

25 THE COURT: Yes.

1 MR. MACLAY: Your Honor, I just wanted to clarify
2 my colleagues, who are with me here today are both members
3 of this Bar, I myself am not, so I wanted to let Your Honor
4 know I'd be filing a motion --

5 THE COURT: That's fine.

6 MR. MACLAY: -- shortly and also to echo the
7 comments made by the other groupings of ad hoc committees
8 that have spoken here today, we look forward to engaging
9 with the debtors and other constituencies on hopefully a
10 joint path forward, and at least taking up the initiation we
11 heard today to expand the tent to try to make this case move
12 more smoothly. Thank you, Your Honor.

13 THE COURT: I have a pending case that's a tiny
14 case with enormous damages, and the main parties are
15 Attorney Generals in about 19 states, and we have thus far
16 been able to avoid issues that I don't think the states nor
17 I believe need to be litigated, because the states have
18 worked cooperatively, even though they might have had
19 different views about the end result in terms of information
20 sharing, obtaining, et cetera, and I think that's
21 appropriate.

22 And I also think it is appropriate for all the
23 states to focus on -- and other parties too, of course, to
24 focus on issues surrounding a bar date and ultimate
25 distribution. I mean, to me that's critical and I would

1 hope that anyone with a serious interest in that process
2 will not wait till the last minutes, but will get involved
3 early in working on those issues, which are thorny.

4 MR. HUEBNER: Your Honor, if I may, let me bring
5 us home, which I hope we'll be brief enough, I'm not even
6 going to step up to the podium.

7 THE COURT: Okay.

8 MR. HUEBNER: You know, under the last few moments
9 of remarks as Your Honor of course understood, there are
10 some relatively sharp state versus locality issues, some
11 relatively potentially sharp and sharply expressed state
12 versus state issues. And obviously there's only one us and
13 there are many of them. And we are here to serve as
14 fiduciary and to be a clearinghouse. As I said in the
15 beginning, there are two touchstones. To maximize the value
16 of this enterprise, and to ensure that it is fairly
17 distributed under the priorities required by federal law, to
18 legitimate claimants with equality of treatment within the
19 class.

20 So those things will have to be worked out to some
21 extent since we are all aware that Purdue is only one
22 defendant and as dollars go, nowhere near the top of the
23 pile of the opioid defendants being sued by many of these
24 folks, our hope is that ultimately they will figure out an
25 allocation method amongst themselves, that they will apply

1 to all opioid proceeds and all litigations that I assume
2 they hope will get --

3 THE COURT: Well, let's just start with this one.

4 MR. HUEBNER: No, understood, so let me tell you
5 what, so just so you understand, Your Honor, in version 44
6 and 45 of my speech, I actually address the bar date and the
7 fact that we have documents largely drafted and we're ready
8 to interface. We're actually waiting to have people to have
9 a dialogic relationship with, to actually talk sensibly and
10 show them what we have in mind. We've canvassed the other
11 cases, we always try, as Your Honor did in several things
12 say, when you said, pretty good, but actually it's gotten
13 even better in the last month and you missed it. We
14 actually try to do that, and so for things like the bar date
15 and related issues, you can be sure that we're standing
16 ready and we will advance the ball as far as we can.

17 I would like to commend all the parties because I
18 actually am grateful for it. We worked very hard today not
19 to discuss at all things related to liability and the past
20 and the conduct, and obviously the people on all sides and
21 all benches who have very strong views, whether people all
22 agree, this is not a gift, this is economic reality, is
23 something I think I'm also going to leave, and I'm not just
24 going to address that today.

25 This is a very complicated case. And we

1 understand that in some ways the debtors are in the middle
2 trying to bring together a deal that we hope is in
3 everybody's best interests, do the best we can. It'll be a
4 bumpy road and hopefully we'll work together constructively.
5 And if we have to litigate things we will, but you know, for
6 starters, let's have people to talk to and go from there, we
7 certainly stand ready to do so.

8 Let me finally end with where I actually, in fact,
9 began which is with a thank you.

10 THE COURT: Okay.

11 MR. HUEBNER: We know how much work this meant for
12 people, especially people who don't have flogs of associates
13 and counsel and partners to work with them, who got binders
14 just as thick as people who do, and people moved heaven and
15 earth to think thoughtfully, to raise problems that were
16 good faith questions, and got us to change our path on some
17 issues, and we really are grateful especially for the
18 governmental actors who work on extremely short notice, very
19 often on a weekend, with no overtime pay and no staff
20 including obviously chambers itself. We hope to accommodate
21 obviously a much more reasonable timing schedule going
22 forward.

23 THE COURT: Okay. All right. So I will look for
24 the orders. You can e-mail them, and in the meantime, you
25 can act in reliance on my rulings today.

1 MR. SCHWARTZBERG: Your Honor, I just wanted to
2 announce today, committee formation meeting is the 22nd --
3 26th at the Grand Height at 10 --

4 THE COURT: Okay.

5 MR. SCHWARTZBERG: -- at 11 a.m.

6 THE COURT: Thank you.

7 (Proceedings concluded at 1:27 p.m.)

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C E R T I F I C A T I O N

We, Sherri L. Breach & Sheila Orms, certify that the foregoing transcript is a true and accurate record of the proceedings.

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